

## EXHIBIT E: BUSINESS ASSOCIATE AGREEMENT ("BAA")

This Exhibit E Business Associate Agreement ("BAA") is attached and expressly made part of the Customer Agreement ("Agreement") and each of its Exhibits for all intents and purposes, including without limitation, Exhibit A Customer Package ("Package"), Exhibit B Terms & Conditions ("T&C"), Exhibit C Affiliates ("Affiliates"), Exhibit D Scope of Work ("SOW") and Exhibit F Sample Authorization Form ("Authorization"). For purposes of this BAA and the Agreement, DoctorLogic™ (DL) shall mean "**Business Associate**" and Customer referenced in the Agreement shall mean "**Covered Entity**". See the T&C's and Agreement with respect to Customer's indemnification of DL against any action, claim, proceeding, fine, levy or loss arising out of or relating to DL's role in hosting, assembling, transmitting, disclosing or publishing any Custom Content to any Product for Customer and its applicable Affiliates.

### RECITALS:

WHEREAS, Business Associate provides certain products and services pursuant to an underlying agreement (the "Agreement") to Covered Entity and, in connection with those products and services, Covered Entity may disclose to Business Associate, or Business Associate may create on Covered Entity's behalf, Protected Health Information that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA," found at Public Law 104-191), and certain privacy and security regulations promulgated by the U.S. Department of Health and Human Services to implement certain provisions of HIPAA and the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), as modified by the Final Omnibus Rule effective as of March 26, 2013 (collectively the "HIPAA Requirements") found at 45 C.F.R. Parts 160, 162 and 164;

WHEREAS, Covered Entity is a "covered entity," as that term is defined in the HIPAA Requirements;

WHEREAS, Business Associate is a "business associate" of Covered Entity, as that term is defined in the HIPAA Requirements; and

WHEREAS, pursuant to the HIPAA Requirements, all business associates of Covered Entity, as a condition of doing business with Covered Entity, must agree in writing (as evidenced by valid signatures in the Agreement) to certain mandatory provisions regarding, among other things, the privacy and security of Protected Health Information.

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING, and the mutual promises and covenants contain herein, the parties agree as follows:

### TERMS & CONDITIONS:

1. **DEFINITIONS:** Terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in the HIPAA Requirements.

"Breach" means the unauthorized acquisition, access, use, or disclosure of Protected Health Information, which compromises the security or privacy of such Protected Health Information, but does not include circumstances excluded from the definition of Breach as provided in 45 C.F.R. 164.402.

"Data Aggregation" has the same meaning as the term "data aggregation" in 45 C.F.R. 164.501.

"Designated Record Set" has the same meaning as the term "designated record set" in 45 C.F.R. 164.501.

"Electronic Protected Health Information" or "ePHI" has the same meaning as the term "electronic protected health information" in 45 C.F.R. 160.103, limited to information created, or received or transmitted by Business Associate from or on behalf of Covered Entity.

"Individual" has the same meaning as the term "individual" in 45 C.F.R. 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

"Limited Data Set" has the same meaning as the term "limited data set" in 45 C.F.R. 164.514(e)(2).

"Notice of Privacy Practices" means a notice of privacy practices that complies with the standards set out in 45 C.F.R. 164.520.

"Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. parts 160 and 164.

"Protected Health Information" or "PHI" has the same meaning as the term "protected health information" in 45 C.F.R. 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. Protected Health Information shall include Electronic Protected Health Information.

"Required by Law" has the same meaning as the term "required by law" in 45 C.F.R. 164.103.

"Secretary" means the Secretary of the U.S. Department of Health and Human Services or his designee.

"Security Standards" means the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. parts 160 and 164.

## **2. OBLIGATION AND ACTIVITIES OF BUSINESS ASSOCIATE:**

*Specific Uses and Disclosures.* Except as otherwise limited in this BAA and the Agreement, Business Associate may receive, create, use, disclose, maintain, or transmit Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity provided that such use or disclosure would not violate the Privacy Rule or Security Standards if done by Covered Entity and as permitted herein. To the extent Business Associate is carrying out any obligation of Covered Entity with respect to the HIPAA Requirements, Business Associate shall comply with such requirements of the HIPAA Requirements that apply to Covered Entity in the performance of such obligations.

*Administrative Uses and Disclosures.* Except as otherwise limited in this BAA and the Agreement, Business Associate may use or disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate provided the disclosures are permitted or Required by Law.

*Data Aggregation.* Business Associate may provide Data Aggregation services relating to the health care operations of Covered Entity.

*Other Business Associates.* As part of its providing functions, activities, and/or services to Covered Entity as identified herein, Business Associate may disclose Protected Health Information, to other business associates of Covered Entity and may use and disclose Protected Health Information, received from other business associates of Covered Entity as if this information was received from, or originated with, Covered Entity.

*Permitted Uses and Disclosures.* Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this BAA and the Agreement or as Required by Law.

*Safeguards for Protection of Protected Health Information.* Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this BAA and the Agreement or as Required by Law.

*Reporting of Unauthorized Uses or Disclosures.* Business Associate agrees to report to Covered Entity, in writing, without unreasonable delay from Business Associate's discovery, any use or disclosure, including Breach, of the Protected Health Information not provided for by this BAA and the Agreement.

*Content of Report of Breach.* In the event of a Breach of Protected Health Information, Business Associate shall provide Covered Entity a written report, without unreasonable delay from Business Associate's awareness of the Breach.

*Mitigation of Unauthorized Uses or Disclosures.* Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this BAA and the Agreement or the HIPAA Requirements.

*Agents and Subcontractors.* Business Associate agrees to ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits Protected Health Information on behalf of Business Associate or on behalf of Covered Entity, agrees contractually in writing to the same restrictions and conditions that apply through this BAA and the Agreement to Business Associate with respect to such Protected Health Information. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards and security measures to protect such Electronic Protected Health Information.

*Authorized Access to Protected Health Information.* Business Associate agrees to provide access, at the request of Covered Entity, and in the reasonable time and manner (including, as applicable, in electronic format or electronic copies), to Protected Health Information in a Designated Record Set, to the Individual or to Covered Entity in order to allow Covered Entity to meet the requirements under 45 C.F.R. 164.524.

*Amendment of Protected Health Information.* Business Associate agrees to make any Protected Health Information in a Designated Record Set available for any amendments pursuant to 45 C.F.R. 164.526 at the request of Covered Entity or an Individual, and in the reasonable time and manner designated by Covered Entity.

*Secretary's Right to Audit.* Business Associate shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's and Business Associate's compliance with the Privacy Rule.

*Accounting for Uses and Disclosures.* Business Associate agrees to make available the Protected Health Information and information required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with the HIPAA Requirements accounting requirements as provided in 45 C.F.R. 164.528.

*Safeguards for Protection of Electronic Protected Health Information.* Business Associate shall utilize appropriate and reasonable administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of Electronic Protected Health Information maintained or transmitted on behalf of Covered Entity, other than as provided for by this BAA and the Agreement.

*Security Incidents.* Business Associate agrees to report to Covered Entity, without unreasonable delay, any security incident, including Breaches and any successfully unauthorized access, use, disclosure, modification, or destruction of ePHI or PHI, or interference with system operations in an information system containing PHI of which Business Associate becomes aware.

*General Privacy Rule and Security Standards Compliance.* Business Associate acknowledges that Business Associate is Required by Law to comply with the HIPAA Security Standards in accordance with 45 C.F.R. 164.302 through 164.316 and the provisions of the HIPAA Privacy Rule in accordance with 45 C.F.R. 164.504(e) in the same manner that such sections apply to Covered Entity, with respect to compliance with the standards in 45 C.F.R. 164.502(e) and 45 C.F.R. 164.504(e).

*Minimum Necessary Requirement.* As applicable, Business Associate shall comply with the minimum necessary requirement, in accordance with 45 C.F.R. 164.502(b) of the HIPAA Requirements, with respect to the use, disclosure, or request of Protected Health Information.

### **3. OBLIGATION AND ACTIVITIES OF COVERED ENTITY:**

*Notice of Privacy Practices.* Covered Entity shall promptly provide Business Associate with its Notice of Privacy Practices, as well as any changes to such notice, if such changes affect Business Associate's use or disclosure of PHI or ePHI.

*Revocation of Permitted Use or Disclosure of Protected Health Information.* Covered Entity shall promptly provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

*Restrictions on Use or Disclosure of Protected Health Information.* Covered Entity shall notify, as soon as practicable, Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

*Requested Uses or Disclosures of Protected Health Information.* Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the HIPAA Requirements if done by Covered Entity. Except that Business Associate may use or disclose Protected Health Information for management, administrative, and legal activities of Business Associate and for Data Aggregation.

### **4. TERM AND TERMINATION:**

*Term.* Except as otherwise provided, this BAA shall commence on the Effective Date of the Agreement and continue until all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or, if Business Associate believes that it is infeasible to return or destroy such Protected Health Information, the protections are extended to such information in accordance with the termination provisions in this Section.

*Termination for Cause.* Upon Covered Entity's knowledge of an activity or practice of Business Associate that constitutes a material breach or violation of this BAA by Business Associate, Covered Entity shall inform Business Associate in writing of such breach or violation and provide Business Associate an opportunity to cure the breach or violation within thirty (30) days. If Business Associate does not cure the breach or violation within thirty (30) days, Covered Entity may immediately terminate this BAA upon written notice to Business Associate.

*Effect of Termination.* Except as provided in paragraph (ii) of this Section, upon termination of this BAA, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Business Associate shall extend the protections of this BAA to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

## 5. MISCELLANEOUS:

*Amendment.* Business Associate and Covered Entity agree to take such action as is reasonably necessary to amend this BAA as is necessary for Covered Entity and Business Associate to comply with the requirements of the HIPAA Requirements and any amendment thereto. This BAA may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed and agreed to by the parties.

*Interpretation.* In the event of an inconsistency between the provisions of this BAA and the mandatory terms of the HIPAA Requirements, the HIPAA Requirements shall prevail. Where provisions of this BAA are different from those mandated by the HIPAA Requirements, but are nonetheless permitted by law, the provisions of this Agreement shall control.

*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 Business Associate and Covered Entity, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

*Notices.* Any notices to be given hereunder shall be made via U.S. Mail or express courier, or hand delivery as defined by the T&C's of the Agreement.

*Regulatory References.* A reference in this BAA to a section in the HIPAA Requirements means the section as in effect or as amended, and for which compliance is required.

*Subpoenas.* In the event that a party receives a subpoena or similar notice or request from any judicial, administrative or other party in connection with this BAA, including, but not limited to, any unauthorized use or disclosure of PHI in breach of this BAA or in violation of the HIPAA Requirements, the party shall as soon as practicable forward a copy of such subpoena, notice or request to the other party and afford the other party the opportunity to exercise any rights it may have under the law.

*Indemnity.* COVERED ENTITY SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS BUSINESS ASSOCIATE, ITS OFFICERS, EMPLOYEES, REPRESENTATIVES, OWNERS, MEMBERS AFFILIATED COMPANIES, AND AGENTS FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIMS, GOVERNMENT INVESTIGATIONS OR ENFORCEMENT ACTIONS, OR OTHER ACTIONS, DEMANDS AND LAWSUITS (TOGETHER "CLAIMS") AND ALL RESULTING COSTS, LIABILITIES, DAMAGES AND EXPENSES INCLUDING REASONABLE ATTORNEYS' FEES ARISING OUT OF COVERED ENTITY'S (I) UNAUTHORIZED DISCLOSURE(S) OF PROTECTED HEALTH INFORMATION; (II) BREACH OF HIPAA REGULATIONS, OR ANY PRIVACY OR SECURITY LAWS OR REGULATIONS; (III) BREACH OF ANY TERM OR PROVISION OF THIS AGREEMENT; (IV) VIOLATION OF ANY LAW OR ANY REPRESENTATION, WARRANTY OR COVENANT IN THIS AGREEMENT; OR (V) ACTION OR INACTION UNDER THIS AGREEMENT. BUSINESS ASSOCIATE SHALL PROVIDE COVERED ENTITY WRITTEN NOTICE OF ANY CLAIM COVERED BY THIS SECTION. COVERED ENTITY SHALL PAY THE EXPENSES OF ALL COSTS. BUSINESS ASSOCIATE MAY TAKE PART IN THE DEFENSE, AT THE REASONABLE EXPENSE OF COVERED ENTITY.

*Survival.* The respective rights and obligations of the parties under Section 5(g) of this BAA shall survive the termination of this BAA.

*Governing Law.* This BAA shall be governed by, and construed in accordance with, the laws of the State of Texas to the extent that the provisions of the HIPAA Requirements do not preempt the laws of the State of Texas.