

Zoom Video Communications BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT is made as of ____ day of _____, 20__ between **Zoom Video Communications Inc.**, hereinafter referred to as “Zoom” or “Business Associate”, located at 55 Almaden Blvd, Suite 600, San Jose, CA 95113 and _____, hereinafter referred to as “Company” or “Covered Entity”, located at _____

RECITALS:

WHEREAS, the parties desire to comply with relevant Federal and State confidentiality standards, including but not limited to: the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); the Final Rule for Standards for Privacy of Individually Identifiable Health Information adopted by the United States Department of Health and Human Services and codified at 45 CFR part 160 and part 164, subparts A & E (the “Privacy Rule”) and The Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH ACT”).

NOW THEREFORE, the parties to this Agreement hereby agree as follows:

1. Definitions. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§160.103 and 164.501.
 - a. **Breach** shall have the meaning specified in § 17921 of the HITECH Act as amended by the Omnibus Rule, Federal Register, Vol. 78, No. 17 / Friday, January 25, 2013 / Rules and Regulations, pp. 5566 *et seq.*
 - b. **Business Associate** refers to Zoom and shall have the meaning specified in the Privacy Rule, the Security Rule, § 27938 of the HITECH Act, particularly 45 C.F.R. § 160.103, and the Omnibus Rule.
 - c. **Covered Entity** refers to Company and shall have the meaning specified in 45 C.F.R. § 160.103 as modified by the Omnibus Rule.
 - d. **Designated Record Set** shall have the meaning specified in 45 C.F.R. § 164.501.
 - e. **Electronic Health Record** shall have the meaning specified in § 17921 of the HITECH Act as modified by the Omnibus Rule.

- f. **Privacy Rule** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, subparts A and E.
 - g. **Protected Health Information (“PHI”)** shall have the meaning specified in 45 C.F.R. § 160.103 as modified by the Omnibus Rule, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of covered entity pursuant to this Agreement.
 - h. **Required by law** shall mean a mandate contained in law that compels a use or disclosure of PHI.
 - i. **Secretary** shall mean the Secretary of the Department of Health and Human Services and those employees or agents designated to act on the Secretary’s behalf.
 - j. **Security or Security Measures** means the administrative, physical, and technical safeguards and documentation requirements specified in the Security Rule.
 - k. **Security Rule** shall mean the Standards for Security of Electronic Protected Health Information at 45 C.F.R. Parts 160 and 164, subparts A and E.
 - l. **Service Agreement** shall mean the agreement pursuant to which Business Associate is to provide video communication services and other related services to Covered Entity.
 - m. **Unsecured PHI** shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111-5.
2. **General Statement Regarding Maintenance of PHI by Business Associate.** Business Associate is in the business of providing video communication services. Business Associate does not generally maintain any record of any content communicated between persons using its services. The exception to that being when a user of Business Associate’s services elects to record a video session and store it on Business Associate’s servers. The user may also elect to store a recording of a video session on the user’s computer or the user’s internal storage system. Business Associate strongly recommends that users, including Covered Entity, store video sessions containing highly sensitive or confidential information, such as PHI, only on the user’s computer or internal storage systems and not on Business Associate’s servers. Because of the nature of Business Associate’s business and technology platform, recordings of video sessions contained on

Business Associate's servers are not indexed or categorized in a manner that allows for search or retrieval based on the content of the video session. The time and manner of Business Associate's compliance with the provisions of this Agreement is subject to the limitation on Business Associate's systems as described in this paragraph.

3. Obligations and Activities of Business Associate.

- a. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this Agreement, as required or permitted between the Service Agreement, or as required or permitted by law, provided such use or disclosure would also be permissible by law by Covered Entity.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. 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 Agreement.
- d. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement.
- e. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- f. Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524.
- g. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.

- h. Business Associate agrees to make 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 Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
 - i. Business Associate agrees to document such disclosures of Protected Health Information 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 Protected Health Information in accordance with 45 CFR §164.528.
 - j. Business Associate agrees to provide to Covered Entity or an Individual, in a time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
 - k. In addition to the appropriate safeguards to protect the confidentiality, integrity, and availability of PHI required by this Agreement and the Covered Entity, the Business Associate will implement the administrative, physical and technical safeguards and their required implementation specifications and will determine whether to implement the addressable implementation specifications of the Security Rule and comply with the policies and procedures and documentation requirements of the Security Rule as required by the HITECH Act.
 - l. The Business Associate shall immediately report to the Covered Entity in writing any access, use, or disclosure of PHI not permitted by law and this Agreement, and any breach of unsecured PHI of which it becomes aware without reasonable delay and in no case no more than 10 calendar days from discovery.
4. Permitted Uses and Disclosures by Business Associate.
- a. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Agreement, provided that such use or disclosure would not violate the Privacy Rule or the HITECH Act, if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity required by 45 CFR §164.514(d).

- b. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - c. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain 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 notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - d. Except as otherwise limited in this Agreement, Business Associate will ensure that any agents, including subcontractors, to whom it discloses PHI agrees in writing to the same restrictions and conditions that apply to the Business Associate.
 - e. If the Business Associate creates, receives, maintains, or transmits electronic PHI on behalf of the Covered Entity: Agents, including subcontractors, will implement the safeguards required with respect to electronic PHI.
 - f. The Business Associate shall implement and apply appropriate sanctions against agents and subcontractors that violate the conditions and restrictions of this Agreement and shall mitigate the effects of any such violation.
 - g. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B).
 - h. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1).
5. Obligations of Covered Entity.
- a. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
 - c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.
- 6. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, provided that, to the extent permitted by the Service Agreement, Business Associate may use or disclose Protected Health Information for Business Associate's Data Aggregation activities or proper management and administrative activities.
- 7. Term and Termination.
 - a. The term of this Agreement shall begin as of the effective date of the Service Agreement and shall terminate when 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 it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
 - b. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - i. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the Service Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - ii. Immediately terminate this Agreement and the Service Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - iii. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
 - c. In addition to the grounds for termination specified in this Agreement, the

Covered Entity may terminate this Agreement, effective immediately, if the Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations, or other security or privacy laws or if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party.

- d. Except as provided in paragraph (e) of this Section, upon any termination or expiration of this Agreement, 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. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- e. 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. Upon Covered Entity's written agreement that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement 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.

8. Miscellaneous.

- a. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- b. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA, the Privacy Rule, and the HITECH Act.
- c. The respective rights and obligations of Business Associate under Section 7(d) and (e) of this Agreement shall survive the termination of this Agreement.
- d. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule and the HITECH Act.

- e. The Business Associate shall not use or disclose PHI for fundraising or marketing purposes.
- f. The Business Associate shall not disclose PHI to a health plan for payment or health care operations purposes if the individual who is the subject of the PHI has requested this restriction and has paid out of pocket in full for the item or service to which the PHI relates.
- g. The Business Associate will notify the Covered Entity within 10 days of learning the Business Associate has become the subject of an audit, compliance review, or complaint investigation by either the Office of the Inspector General of DHHS or the Office of Civil Rights of DHHS.
- h. If the Business Associate knows of a pattern of activity or practice of the Covered Entity that constitutes a material breach or violation of the Covered Entity's obligations under this Agreement, the Business Associate must take reasonable steps to notify Covered Entity to cure the breach or end the violation. If the steps are unsuccessful, the Business Associate may terminate this Agreement or, if termination is not feasible, report the problem to the Secretary of DHHS. The Business Associate shall provide written notice to the Covered Entity of any activity or practice that is believed to constitute a material breach or violation of the Agreement within 5 days of discovery and shall meet with the Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

COVERED ENTITY:

BUSINESS ASSOCIATE:

Zoom Video Communications, Inc.

Signature:_____

Signature:_____

Name:_____

Name:_____

Title:_____

Title:_____

Date:_____

Date:_____