



Titanium Respiratory Questionnaire

Business Associate Agreement

NOTICE:

This Business Associate Agreement applies to any individual or group who may have access to any HIPAA restricted or protected information that may exist within the Titanium Respiratory Questionnaire site. If this does not apply to you, please disregard this agreement.

This Business Associate Agreement (“Agreement”) is made and entered into by and between **Titanium Software, LLC** (“Covered Entity” or “CE”), and the individual, group or entity utilizing Titanium products and/or services (“Business Associate” or “BA”). Covered Entity and Business Associate may be referred to individually as a “Party” and collectively as the “Parties.”

Recitals

WHEREAS, CE and BA have entered into an agreement pursuant to which BA will provide certain services to or on behalf of CE, or CE will provide certain services to or on behalf of BA, and CE and BA may create, receive, maintain, transmit, or have access to Protected Health Information in order to provide those services (“Services Agreement”);

WHEREAS, the Department of Health and Human Services (“HHS”) has promulgated regulations at 45 Code of Federal Regulations (“CFR”) Parts 160 and 164 implementing the privacy requirements (“Privacy Rule”) and regulations at 45 CFR Parts 160, 162, and 164 implementing the security requirements (“Security Rule”) set forth in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) as amended by regulations implementing Subtitle D of the Health Information Technology for Economic and Clinical Health Act which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5);

WHEREAS, the Privacy Rule and Security Rule require CE to enter into a written contract with BA in order to assure certain protections for the privacy and security of Protected Health Information, and the Privacy Rule and Security Rule prohibit the disclosure or use of Protected Health Information to or by BA if such a contract is not in place;

WHEREAS, both Parties mutually agree to satisfy the foregoing regulatory requirements and all federal, state, and local confidentiality, privacy, and security laws through this Agreement;

NOW THEREFORE, in consideration of the foregoing and of the mutual promises contained herein, the receipt and sufficiency of which are hereby acknowledged, CE and BA 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 Part 160, Part 162, and Part 164, then in effect or as amended, which are collectively referred to as the “HIPAA Rules.”



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- 1.1** “**Disclose**” and “**Disclosure**” mean, with respect to Protected Health Information, the release, transfer, provision of, access to, or divulging in any other manner of Protected Health Information outside BA’s internal operations or to persons or entities other than members of its workforce.
 - 1.2** “**HITECH Act**” shall mean the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005, and the regulations promulgated thereunder by the Secretary.
 - 1.3** “**Individual**” shall have the same meaning found in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
 - 1.4** “**Protected Health Information**” or “**PHI**” shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created, received, maintained, or transmitted by BA from or on behalf of CE pursuant to this Agreement.
 - 1.5** “**Use**” or “**Uses**” shall mean, with respect to Protected Health Information, the sharing, employment, application, utilization, examination, or analysis of such information within BA’s internal operations.
- 2.** Authorized Uses and Disclosures by Business Associate.
- 2.1** *General Use and Disclosure*
Except as otherwise limited in this Agreement, BA may Use or Disclose PHI on behalf of CE as necessary to provide services as set forth in the Services Agreement, if such Use or Disclosure of PHI would not violate the Privacy Rule if done by CE.
 - 2.2** *Business Activities of Business Associate*

 - 2.2.1** Unless otherwise limited herein, BA may Use PHI:

 - (a) As necessary for the proper management and administration of BA or to carry out the legal responsibilities of BA;
 - (b) To provide Data Aggregation services as permitted by 42 CFR § 164.504(e)(2)(i)(B);
 - (c) As Required by Law.



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2.2.2 Unless otherwise limited herein, BA may Disclose PHI for the proper management and administration of BA or to carry out the legal responsibilities of BA provided that:

- (a) The Disclosure is Required by Law; or
- (b) BA obtains reasonable assurances from the person to whom the PHI is Disclosed that it will be held confidentially and Used or further Disclosed only as Required by Law or for the purposes for which it was Disclosed to the person, and the person notifies BA of any instances of which it is aware in which the confidentiality of the PHI has been breached.

3. Business Associate Obligations.

3.1 Use of PHI

BA shall not Use or further Disclose PHI other than as permitted or required by the Services Agreement, this Agreement, or as Required by Law. In Using, Disclosing, or requesting PHI from CE, BA agrees to limit PHI to the minimum necessary to accomplish the intended purpose of such Use, Disclosure, or request. "Minimum necessary" shall be interpreted in accordance with the HITECH Act and the HIPAA Rules, and implementing regulation or guidance on the definition. BA will make reasonable efforts to limit access to PHI to those members of its workforce that need access based upon their roles and functions.

3.2 Appropriate Safeguards; Compliance with Security Rule

BA shall use appropriate administrative, technical, and physical safeguards to prevent Use or Disclosure of PHI other than as provided for by this Agreement. BA shall comply with the Security Rule and shall implement administrative, physical, and technical safeguards (including written policies and procedures) that will reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information it creates, receives, maintains, or transmits on behalf of CE.

3.3 Disclosure to Subcontractors

BA agrees to ensure that any subcontractor that creates, receives, maintains, or transmits PHI on behalf of BA agrees to comply with the applicable HIPAA Rules and the same restrictions and conditions that apply through this Agreement to BA with respect to such PHI by entering into a Business Associate Agreement with the subcontractor consistent with 45 CFR 164.502(e).

3.4 Delegation of Covered Entity's Duties



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To the extent BA is to carry out one or more of CE's obligations under the Privacy Rule, BA shall comply with the requirements of the Privacy Rule that apply to CE in the performance of such obligations.

3.5 *Disclosure Accounting*

BA agrees to document all Disclosures of PHI and information related to such Disclosures as would be required for CE to respond to a request by an Individual for an accounting of Disclosures in accordance with 45 CFR § 164.528 ("Disclosure Information") and to retain such documentation for six (6) years from the date of Disclosure.

Within twenty (20) calendar days after receipt of a written notice from CE of a request by an Individual for an accounting of Disclosures of PHI, BA shall provide to CE the Disclosure Information to enable CE to meet the Disclosure accounting obligations under 45 CFR § 164.528. In the event a request for an accounting regarding PHI is delivered directly to BA or its subcontractors, BA shall within three (3) business days after receipt forward such request to CE. Within fifteen (15) calendar days after forwarding the request to CE, BA shall provide its Disclosure Information to CE. It shall be CE's responsibility to prepare and deliver any accounting of disclosures to the Individual. BA will include, in any Disclosure Information, the information listed in 45 CFR § 164.528(b).

3.6 *Access to PHI*

Within fifteen (15) calendar days following CE's request, BA shall make available to CE or, at the written direction of CE, to an Individual, for inspection and copying PHI about the Individual that is in a Designated Record Set maintained by the BA, so that CE may meet its access obligations under 45 CFR § 164.524. If CE requests an electronic copy of PHI that is maintained by BA electronically in a Designated Record Set, BA will provide an electronic copy in the form and format specified by CE in accordance with 45 CFR § 164.524(c)(2). Any denial of access to the PHI requested shall be the responsibility of the CE.

3.7 *Amendment of PHI*

Upon receipt of a request from CE, BA shall promptly amend or make available to CE for amendment, an Individual's PHI maintained by BA in a Designated Record Set to enable CE to meet its obligations under 45 CFR § 164.526. Any denial of a request by an Individual for amendment of PHI maintained by BA pursuant to the Agreement shall be the responsibility of CE.

3.8 *Government Access to Books and Records*

BA shall make its internal practices, books, and records relating to the Use and Disclosure of PHI received from, or created or received by BA on behalf of CE, available to the Secretary for purposes of determining CE's compliance with the



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HIPAA Rules. Unless prohibited by law or court or order, BA shall provide to CE (i) prompt written notice of BA's receipt of any such request from the Secretary and (ii) a copy of any documentation, books, and records provided by BA to the Secretary pursuant to the Secretary's request.

3.9 *Reporting and Mitigation of Unauthorized Use and Disclosure of PHI or Breach of Unsecured Protected Health Information*

3.9.1 Reporting of Unauthorized Use and Disclosure of PHI. BA shall provide a written report to CE of any Uses or Disclosures of PHI not authorized by the Services Agreement or this Agreement of which it becomes aware not more than five (5) calendar days after the unauthorized Use or Disclosure is discovered.

3.9.2 Reporting of Breach of Unsecured Protected Health Information. BA shall notify CE within five (5) calendar days following the discovery of a suspected or actual Breach of Unsecured Protected Health Information ("Unsecured PHI"). A suspected or actual Breach shall be treated as discovered by BA as of the first day on which the Breach is known or, by exercising reasonable diligence, would have been known to the BA. If a delay is requested by a law enforcement official in accordance with 45 CFR § 164.412, BA may delay notifying CE for the applicable period of time.

3.9.3 Content of Notice. The notice of unauthorized Use or Disclosure, or of Breach of Unsecured PHI, shall include:

- (a) To the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by BA to have been, improperly accessed, acquired, Used, or Disclosed;
- (b) Information related to the unauthorized person or persons who impermissibly Used the PHI or to whom the improper Disclosure was made, and whether the PHI was actually acquired or viewed;
- (c) The nature of the Breach or other non-permitted Use or Disclosure, including a brief description of what happened, the date of the non-permitted Use or Disclosure or Breach, and the date of discovery;
- (d) A description of the types of Unsecured PHI that were involved in the non-permitted Use or Disclosure or Breach, including the nature of services, types of identifiers, and the likelihood of re-identification, including whether full name, social security number, credit card number, date of birth, home address, account



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number, diagnosis, medication, treatment plan, or other information was involved;

- (e) The corrective or investigative action BA took or will take to prevent further non-permitted Uses or Disclosures, to protect against future Breaches, and the extent to which the risk to the PHI has been mitigated;
- (f) Any details necessary for CE to conduct a risk assessment to determine the probability that the PHI believed to have been improperly accessed, acquired, Used, or Disclosed has been compromised and the steps the affected Individuals should take to protect themselves; and
- (g) Such other information, including a written report, as CE may reasonably request.

3.9.4 Costs of Breach Notification and Mitigation. BA shall, at its own cost and expense, mitigate, to the extent practicable, any harmful effects known to BA of any Use or Disclosure of PHI in violation of the requirements of this Agreement. To the extent that CE determines that the Breach notification requirements of the HIPAA Rules are triggered by a Breach of Unsecured PHI, as described in Section 4.3 below, BA shall reimburse CE for all costs related to such notifications.

3.9.5 Security Incidents. BA will report to CE any attempted or successful unauthorized access, Use, Disclosure, modification, or destruction of Electronic Protected Health Information provided by CE or interference with BA's system operations in BA's information system of which BA becomes aware. The Parties acknowledge that probes and reconnaissance scans are commonplace in the industry and, as such, the Parties acknowledge and agree that, to the extent such probes and reconnaissance scans constitute Security Incidents, this Section 3.9.5 constitutes notice by BA to CE of the ongoing existence and occurrence of such Security Incidents for which no additional notice to CE shall be required, as long as such probes and reconnaissance scans do not result in unauthorized access, Use, or Disclosure of PHI. Probes and reconnaissance scans include, without limitation, pings and other broadcast attacks on BA's firewall, port scans, and unsuccessful log-on attempts that do not result in unauthorized access, Use, or Disclosure of PHI.

3.9.6 State Law Requirements. In the event BA has an independent notification obligation related to impermissible Use or Disclosure of PHI in connection with this Agreement or the Services Agreement, BA shall promptly notify CE of such



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obligation and, at least five (5) business days before giving any such notice, BA shall notify CE of its intent to provide the required notifications, including any related information required by applicable state law.

3.10 *Retention of PHI*

BA shall retain all PHI throughout the term of this Agreement and shall continue to maintain such information not otherwise returned or destroyed pursuant to Section 5.4 of this Agreement for a period of six (6) years after the termination of this Agreement.

3.11 *Restrictions on Disclosures*

BA will comply with any agreement by CE to provide for confidential communications of PHI, or to restrict the Use or Disclosure of PHI, pursuant to 45 CFR § 164.522, including any request by an Individual to restrict the Disclosure of the Individual's PHI to a health plan if the Disclosure is (1) for the purpose of carrying out payment or health care operations, is not for purposes of carrying out treatment, and is not otherwise Required by Law, and (2) the PHI pertains solely to a health care item or service for which the Individual, or person other than the health plan on behalf of the Individual, has paid the CE in full.

3.12 *Prohibition on Sale of PHI*

Except as otherwise expressly permitted by the HIPAA Rules, BA shall not directly or indirectly receive remuneration, including financial or non-financial remuneration, in exchange for an Individual's PHI unless CE or BA obtains a valid authorization that meets the requirements of 45 C.F.R § 164.508 and states that the disclosure will result in remuneration to the BA.

3.13 *Standard Transactions.*

BA shall comply with the HIPAA Rules' Standards for Electronic Transactions when conducting any Standard Transactions on behalf of CE.

4. **Covered Entity Obligations.**

4.1 With regard to the Use and/or Disclosure of Protected Health Information by BA, CE agrees to:

4.1.1 Notice of Privacy Practices

Provide BA in a timely manner a written or electronic copy of the notice of privacy practices (the "Notice") that CE provides to Individuals in accordance with 45 CFR § 164.520, including any limitation(s) in such Notices to the extent that such limitation may affect BA's Use or Disclosure of PHI.



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4.1.2 Restrictions

Notify BA in writing 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. CE will notify BA in writing of the termination of any such restriction requirement and inform BA whether any of the PHI will remain subject to the terms of the restriction agreement.

4.1.3 Authorizations

Inform BA, in writing and in a timely manner, of any changes in, or revocation of, an authorization provided to a CE by an Individual to Use or Disclose PHI to the extent that such changes may affect BA's Use or Disclosure of PHI.

4.1.4 Confidential Communications

Notify BA in writing and in a timely manner, of any confidential communications requests related to an Individual's PHI that CE has agreed to in accordance with 45 CFR § 164.522, to the extent that such request may affect BA's Use or Disclosure of PHI. CE will notify BA in writing of the termination of any such confidential communications requirement.

4.2 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 a CE.

4.3 *Determination of Breach and Notification Obligations*

CE will be solely responsible to determine whether a non-permitted Use or Disclosure constitutes a Breach and will be responsible to provide, to the extent and within the time required by the HIPAA Rules, notice to the affected Individuals, the media, and the Secretary of any Breach of Unsecured PHI. If CE determines the non-permitted Use or Disclosure is a Breach that triggers the HIPAA Rules' breach notification requirements, then BA will reimburse CE for all costs related to the notifications of a Breach of Unsecured PHI created, received, maintained, or transmitted by BA.

4.4 *Compliance Review*

CE may, upon giving reasonable notice to BA, conduct periodic reviews of BA's internal practices, books, and records related to its Use and Disclosure of PHI pursuant to this Agreement to determine compliance with this Agreement and the HIPAA Rules. Such reviews shall be performed on a non-interfering basis and during such times as are reasonably acceptable to BA.



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5. Term and Termination.

5.1 *Term and Effective Date*

This Agreement shall be effective on the effective date of the Services Agreement and shall continue in effect until all obligations of the Parties have been met, unless terminated as provided herein or by the mutual agreement of the Parties.

5.2 *Termination for Material Breach*

Upon CE's determination, in its sole discretion, that BA has violated a material term of this Agreement, CE will provide BA with written notice of the violation and either (i) an opportunity to cure the breach or end the violation within twenty (20) calendar days after BA's receipt of the notice or such other period determined reasonable and appropriate by CE, or (ii) terminate this Agreement if BA does not cure the breach or end the violation within such period, or (3) immediately terminate this Agreement if eliminating the violation or cure of the breach is not possible.

5.3 *Termination of Agreement*

This Agreement shall automatically terminate without any further action of the Parties upon the termination or expiration of the Services Agreement.

5.4 *Effect of Termination*

5.4.1 Upon termination of this Agreement, BA shall return all PHI received from, or created or received by BA on behalf of, CE that is then maintained in any form by BA or its subcontractors, or if expressly requested to do so by CE, BA shall destroy such PHI and provide CE documentation evidencing such destruction. BA shall retain no copies of such PHI except as follows. If BA determines that return or destruction of PHI is not feasible, BA shall provide notice to CE of the conditions that make return or destruction infeasible, and 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.

5.4.2 In the event this Agreement is terminated for any reason, the Services Agreement will also terminate as of the effective date of termination of this Agreement.

5.5 *Survival*

The obligations of BA under this Section 5 shall survive the termination of this Agreement.

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6. Miscellaneous.

- 6.1 *Indemnification.* BA shall indemnify, defend, and hold harmless CE (including without limitation CE's employees, officers, directors, agents, successors, and assigns) from and against any and all claims, causes of action, liabilities, damages, costs, or expenses (including without limitation attorneys' fees, court costs, costs of administrative or other proceedings, and costs of investigation) arising out of or related to any breach of any of the terms and provisions of this Agreement by BA or any party acting by or through BA (including without limitation its employees, agents, or Subcontractors). The obligations of BA shall survive the termination of this Agreement.
- 6.2 *Compliance with Law*
BA and CE agree to comply with all federal, state, and local laws applicable to the privacy and security of health information, including but not limited to the HIPAA Rules and the HITECH Act. Upon the compliance date or other effective date of any law or final regulation or amendment to final regulation adopted by the Secretary that affects the obligations of either Party to this Agreement, this Agreement will automatically amend such that the obligations of each Party under this Agreement remain in compliance with such law or regulation. The Parties agree to take such action as is necessary to document any such amendment to this Agreement as is necessary for compliance with the requirements of the HIPAA Rules and the HITECH Act, and any other applicable law or regulation.
- 6.3 *No Third Party Beneficiaries*
Nothing in this Agreement shall confer any rights, remedies, obligations, or liabilities upon any person or other third party other than the Parties to this Agreement.
- 6.4 *Disputes*
If any controversy, dispute, or claim arises between the Parties with respect to this Agreement, the Parties shall make good faith efforts to resolve such matters informally and in accordance with the dispute resolution process specified in the Services Agreement.
- 6.5 *Interpretation*
Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits CE and BA to comply with applicable HIPAA Rules and the HITECH Act. In the event of any inconsistency or conflict between this Agreement and any other agreement between the Parties, the terms and conditions of this Agreement shall have priority.



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6.6 *Notice*

Any notice to be given hereunder shall be given in writing and in accordance with the applicable terms of the Services Agreement.

6.7 *Governing Law*

This Agreement shall be interpreted, enforced, and governed in accordance with the laws of the State of Washington, notwithstanding any conflict of law doctrine to the contrary.

6.8 *Amendments; Waiver*

This Agreement may not be modified or amended, nor shall any provision hereof be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events. A failure or delay in enforcing compliance with any term or condition of this Agreement does not constitute a waiver of such term or condition unless it is expressly waived in writing.

6.9 *Survival*

BA's obligations to protect the privacy and safeguard the security of PHI as set forth in this Agreement shall survive the termination of this Agreement.

6.10 *Severability*

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

6.11 *Counterparts; Electronic Copies*

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. Electronic copies of this fully executed Agreement shall be deemed to be originals.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the effective date of the Services Agreement.