

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) is an addendum to the Agreement entered into between Customer and LightEdge. Any capitalized terms used but not defined in this BAA shall have the meanings set out in the Agreement.

1. **Definitions.**

1.1. Catch-all definition: The following terms used in this BAA shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (or “PHI”), Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

1.2. **Specific definitions:**

1.2.1. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean LightEdge.

1.2.2. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this BAA, shall mean Customer.

1.2.3. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

2. Scope. In its performance of the Services, LightEdge may process PHI on behalf of Customer. This BAA shall apply to the extent LightEdge processes PHI in connection with LightEdge’s performance of the Services. Similarly, this BAA applies solely to the PHI processed by LightEdge in its performance of those Services, and this BAA shall not apply to LightEdge’s performance of any other services to, or processing of any other data on behalf of, Customer, nor shall it apply to any components, networks, applications, or other systems operated or controlled by Customer or a third party.

3. Obligations of Customer. Without limiting the generality of Section 3, Customer shall:

3.1. investigate and take sole responsibility for understanding the scope and characteristics of the Services provided by LightEdge, assessment of any risks to PHI arising from the use of the Services, and ensuring the appropriate mitigation of such risks;

3.2. implement any encryption, deidentification, or other data handling and sanitization measures that may be necessary or appropriate with respect to any PHI stored by, or otherwise transmitted or provided to, LightEdge, including without limitation on any media provided to LightEdge, or that is in transit or at rest on any networks or systems operated by LightEdge;

3.3. implement and maintain appropriate administrative controls to ensure that LightEdge is notified immediately using LightEdge’s then-standard procedures of all additions or changes to, or deletions from, the list of Customer personnel authorized to physically or electronically access PHI, or systems or physical locations processing PHI;

3.4. ensure the proper configuration of and timely updates to, all hardware, software, or other devices used to process PHI that are made available by LightEdge to Customer; and

3.5. implement and maintain necessary and appropriate authentication procedures and requirements for all personnel authorized to access systems or applications used to process PHI, and limit such access to only authorized personnel.

4. Obligations and Activities of Lightedge. LightEdge, as a business associate of Customer, agrees to do the following, as and to the extent necessary in connection with LightEdge's performance of the Services:

4.1. not use or disclose PHI other than as permitted or required in connection with the provision of LightEdge's Services to Customer pursuant to the Agreement;

4.2. use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;

4.3. in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of LightEdge agree to the same restrictions, conditions, and requirements that apply to LightEdge with respect to such information;

4.4. at the request of Customer and within ten business days, make available PHI in a designated record set to Customer as necessary to satisfy its obligations under 45 CFR 164.524;

4.5. at the request of Customer and within ten business days, make any amendment(s) to PHI in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Customer's obligations under 45 CFR 164.526;

4.6. maintain, and at the request of Customer, make available within ten business days the information required to provide an accounting of disclosures to Customer as necessary to satisfy Customer's obligations under 45 CFR 164.528;

4.7. to the extent LightEdge is to carry out one or more of Customer's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to Customer in the performance of such obligation(s); and

4.8. make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

5. Rights Requests. Customer shall have the sole responsibility for providing any response to an Individual's request for access to PHI or a designated record set, amendments of PHI, or accounting of disclosures. In the event LightEdge receives a request from an Individual, LightEdge shall, without unreasonable delay and no later than five business days of such request, forward such request to Customer so that Customer may fulfill its obligations under the HIPAA Rules.

6. Permitted Uses and Disclosures by Lightedge.

6.1. LightEdge may use or disclose PHI as necessary to perform the Services, any of LightEdge's obligations under the Agreement, or as otherwise agreed in writing between the parties.

6.2. LightEdge may use or disclose PHI as required by law.

6.3. LightEdge agrees to make uses and disclosures and requests for PHI consistent with Customer's minimum necessary policies and procedures.

6.4. LightEdge may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Customer, except for the specific uses and disclosures set forth below.

6.5. LightEdge may provide data aggregation services relating to the Health Care Operations of Customer.

6.6. LightEdge may use PHI for the proper management and administration of LightEdge or to carry out the legal responsibilities of LightEdge.

6.7. LightEdge may disclose PHI for the proper management and administration of LightEdge or to carry out the legal obligations or responsibilities of LightEdge, provided the disclosures are required by law, or LightEdge obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential 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 LightEdge of any instances of which it is aware in which the confidentiality of the information has been breached.

7. Unauthorized Disclosures.

7.1. Breach Discovery. LightEdge shall, without unreasonable delay (and in no less than 45 days), report to Customer any unauthorized use or disclosure of, or access to, PHI of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410 (collectively, a "Breach"). LightEdge shall provide Customer with sufficient information to permit Customer to comply with the notification requirements set forth at 45 C.F.R. §164.400 et seq., including without limitation:

7.1.1. if known, the identities of and contact information for Individuals who were or who may have been impacted by the Breach (e.g., first and last name, mailing address, street address, phone number, email address);

7.1.2. a brief description of the circumstances of the Breach, including the date of the Breach, the date of discovery of the Breach, and the identity of who accessed and received the Unsecured PHI;

7.1.3. if known, a description of the types of Unsecured PHI involved in the Breach (e.g., names, social security number, date of birth, address(es), account numbers of any type, disability codes, diagnostic and/or billing codes and similar information);

7.1.4. a brief description of what LightEdge has done or is doing to investigate the Breach, mitigate harm to the individual impacted by the Breach, and protect against future Breaches; and

7.1.5. contact information for a liaison appointed by LightEdge with whom Customer may ask questions and learn additional information concerning the Breach.

7.2. Continuing Obligations. Following a Breach, LightEdge will inform Customer of additional material information learned by LightEdge regarding the Breach, including but not limited to the information described in Sections 7.1.1 through 7.1.5 above.

7.2.1. Mitigation. LightEdge shall take prompt corrective action and will mitigate and cure, to the extent reasonably necessary, any use or disclosure of PHI by LightEdge, or any of its LightEdge personnel, in violation of the requirements of this Agreement and any harmful effect that is known to or anticipated by LightEdge resulting from the Breach.

7.2.2. Notification. Customer shall, at its sole cost and expense, provide all other necessary notifications of the Breach to Individuals, and/or other persons or entities (“Notifications”). LightEdge will not notify Individuals or other persons or entities of the Breach without the express written consent of Customer.

8. Unauthorized Uses.

8.1. Customer Requests. Customer shall not request LightEdge to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Customer or the Covered Entity, unless such use or disclosures is for the proper management and administration of LightEdge or to carry out the legal responsibilities of LightEdge, as described in Section 4.

8.2. Additional Restrictions. Customer shall notify LightEdge of any restriction on the use or disclosure of PHI that Customer has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect use or disclosure of PHI.

9. Term and Termination.

9.1. Term. Unless terminated sooner for cause as set forth in Section 9.2, the Term of this BAA shall begin when LightEdge starts processing PHI on behalf of Customer and shall terminate upon the later of (i) the termination of any Agreement between LightEdge and Customer, or (ii) when LightEdge ceases to have access to or otherwise process any PHI received from, or created, received, maintained or transmitted by or on behalf of Customer.

9.2. Termination for Cause. Customer may terminate this BAA if LightEdge violates a material term of the BAA, and such violation is not cured within 30 days from the date Customer provides LightEdge written notice of such breach.

9.3. Survival. Any provision of this BAA that expressly or by implication should come into or continue in force on or after termination of the Agreement in order to protect PHI will remain in full force and effect.

9.4. Obligations of LightEdge Upon Termination. Upon termination of this BAA and or any Agreement for Services for any reason, LightEdge, with respect to PHI received from Customer, or created, maintained, or received by LightEdge on behalf of Customer, shall:

9.4.1. retain only that PHI which is necessary for LightEdge to continue its proper management and administration or to carry out its legal responsibilities;

9.4.2. return to Customer or, if agreed to by Customer, destroy the remaining PHI that LightEdge still maintains in any form;

9.4.3. continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as LightEdge retains the PHI;

9.4.4. not use or disclose the PHI retained by LightEdge other than for the purposes for which such PHI was retained and subject to the same conditions set out herein that applied prior to termination; and

9.4.5. return to Customer or, if agreed to by Customer, destroy the PHI retained by LightEdge when it is no longer needed by LightEdge for its proper management and administration or to carry out its legal responsibilities.

10. Miscellaneous.

10.1. Regulatory References. A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended.

10.2. Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

10.3. Interpretation. Any ambiguity in this BAA shall be interpreted to permit compliance with the HIPAA Rules. The provisions of this BAA shall prevail over the provisions of any other prior BAA that exists between the Parties that may conflict with, or appear inconsistent with, any provision of this BAA or HIPAA, unless otherwise explicitly set forth in such BAA.

10.4. Independent Contractor. The relationship between LightEdge and Customer is an independent contractor relationship. None of the provisions of this BAA shall be construed to create an agency, partnership, employer/employee, master/servant or joint venture relationship between the parties.

10.5. Severability. The invalidity or unenforceability of any particular provision of this BAA shall not affect the other provisions hereof, and this BAA shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

10.6. 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 the Parties hereto and their respective successors and permitted assigns, any rights, remedies, obligations, or liabilities whatsoever.

10.7. Limitation of Liability; No Warranty. This BAA shall not modify the Limitations of Liability, indemnification clauses, warranties offered or disclaimed, Service Level Agreements or other terms and conditions of any Agreement for Services between the parties.

10.8. Notices. Any notice permitted or required under this BAA shall be conveyed to the party in accordance with the "Notices" Section of the Agreement.