

Business Associate Agreement

This Business Associate Agreement ("Agreement") is made and entered into at the date and time your ICANotes account is created and is between you ("Covered Entity") and ICANotes LLC ("Business Associate), a limited liability company.

The various sections of the law referred to in this document can be found in the *Federal Register* document issued by the U.S. Department of Health and Human Services (HHS) on January 25, 2013: <http://www.gpo.gov/fdsys/pkg/FR-2013-01-25/pdf/2013-01073.pdf>

Whereas, Business Associate is in the business of providing an online electronic healthcare record (EHR) product ("Offering"); and

Whereas, Covered Entity wishes to engage, or has engaged, Business Associate in connection with said Offering.

Now, therefore, in consideration of the premises and mutual promises herein contained, it is agreed as follows.

1. Definitions

Terms used, but not otherwise defined in this Agreement shall have the same meaning as those terms in the HIPAA Privacy Rule, Security Rule, and HITECH Act.

Specific definitions:

(a) 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

ICANotes LLC.

(b) 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 Agreement, shall mean active subscriber to ICANotes.

(c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

(d) Protected Health Information (PHI) "Protected Health Information" HIPAA protects all "individually identifiable health information held or transmitted by a covered entity or its business associate, in any form of media whether electronic, paper, or oral. This information is called "protected health information" at 45 CFR 160.103

(e) Disclosure. "Disclosure" shall mean the release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information at 45 CFR 160.103

(f) Subcontractor. "Subcontractor" shall mean a person who acts on behalf of a business associate, other than in the capacity of a member of the workforce of such business associate at 45 CFR 160.103.

(g) Breach. "Breach" shall mean "an impermissible use or disclosure of protected health information unless the covered entity or business associate as applicable demonstrates that there is a low probability that the protected health information has been compromised." A four part risk assessment must be performed to determine if protected health information has been compromised at 45 CFR 164.402.

2. Obligations and Activities of Business Associate

Business Associate agrees to:

- (a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;
- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;
- (c) Report to Covered Entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware; The Business Associate will notify **Covered Entity appropriate staff within 3 business days** upon discovery of any **breach or other security incident** related to **ICANotes software or hardware** that might **result in unauthorized disclosure of protected health information of the Covered Entity**. This includes any attempt to access protected health information by anyone including unauthorized ICANotes staff. **ICANotes LLC will report to the Covered Entity: the date, time, nature of incident and other pertinent details. ICANotes LLC will report any possible breach notifications to the Covered Entity as required.**
- (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ICANotes LLC will ensure that any **subcontractors** that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;
- (e) Make available protected health information in a designated record set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524; any requests made by an individual will be forwarded by the Business Associate to the Covered Entity within 7 business days of the individual's request.
- (f) Make any amendment(s) to protected health information 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 Covered Entity's obligations under 45 CFR 164.526; any requests for amendment from the individual will be forwarded to the Covered Entity within 7 business days.
- (g) Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity within 7 business days as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528; any requests for accounting of disclosures from an individual will be forwarded to the Covered Entity within 7 business days.
- (h) To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and
- (i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

3. Permitted Uses and Disclosures by Business Associate

- (a) Business Associate may only use or disclose protected health information as necessary to perform the services requested by the Covered Entity including possible de-identification of information in accordance with 45 CFR 164.514 (a)-(c). Business Associate may only use de-identified information in performance of duties if requested by Covered Entity.
- (b) Business Associate may use or disclose protected health information as required by law.
- (c) Business Associate agrees to make uses and disclosures and requests for protected health information consistent with Covered Entity minimum necessary policies and procedures.

(d) Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity except for the specific uses and disclosures set forth below.

(e) 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 provided it does not violate HIPAA rules.

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

4. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

(a) Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 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, the permission by an individual to use or disclose his or her 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 on the use or disclosure of protected health information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.

5. 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 Subpart E of 45 CFR Part 164 if done by Covered Entity. The exception to this is for data aggregation at the request of the Covered Entity and for the Business Associate's management and administration and legal responsibilities.

6. Term and Termination

(a) Term. The Term of this Agreement shall be effective as of September 3, 2013, and shall terminate on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section.

(b) Termination for Cause. Business Associate authorizes termination of this Agreement by covered entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity and the Covered Entity has determined that additional time to cure the breach is not appropriate.

(c) Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy all protected health information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the protected health information or if it is infeasible to return or destroy protected health information, protections are extended to such information. The provisions of the Agreement shall survive termination of the business associate relationship to the

extent necessary for compliance with the HIPAA rules. This provision shall also apply to protected health information that is in the possession of subcontractors of the Business Associate. Upon termination of this Agreement for any reason, Business Associate, with respect to protected health information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

1. Retain only that protected health information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
2. Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining protected health information that the Business Associate still maintains in any form;
3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as Business Associate retains the protected health information;
4. Not use or disclose the protected health information retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at (e) and (f) above under "Permitted Uses and Disclosures By Business Associate" which applied prior to termination; and
5. Return to Covered Entity or, if agreed to by Covered Entity, destroy the protected health information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
6. Transmit protected health information to another business associate of the Covered Entity at termination if requested by the Covered Entity.
7. Business Associate should obtain or ensure the destruction of protected health information created, received, or maintained by subcontractors.

(d) Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

7. Miscellaneous

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

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

(c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

8. Insurance

(a) As appropriate for commercially reasonable insurance for a business associate enterprise, Business Associate agrees to obtain and maintain a policy or policies of liability insurance or commercially reasonable self insurance coverage that provides insuring agreements with minimum levels of coverage \$ 1 million per claim/\$ 3 million per year without exclusion or limitation that apply to

any harm arising out of a breach of obligations of the Business Associate under this Agreement or negligent acts or omissions in performing this Agreement.

(b) Evidence of Coverage: Notice of Change. Business Associate shall provide Covered Entity with current evidence of coverage for the required insurance policies upon request by the Covered Entity and shall notify the Covered Entity at least ten (10) days prior to any reduction to or cancellation without replacement of Business Associate insurance policies. Coverage under such insurance policies shall survive the termination of this Agreement as such coverage relates to acts arising during the term of this Agreement.

9. **Persons**

Business Associate represents and warrants to Covered Entity that Business Associate (i) is not currently excluded, debarred or otherwise ineligible to participate in any Federal health care program as defined in 42 USC § 1320a-7b (f) ("the Federal health care programs"); (ii) has not been convicted of a criminal offense related to the provision of health care items or services and not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care program, and (iii) is not under any investigation or otherwise aware of any circumstances which may result in Business Associate being excluded from participation in the Federal health care programs. This shall be an ongoing representation and warranty Agreement, and Business Associate shall immediately notify Covered Entity of any change in the status of the representation and warranty set forth in this section. Any breach of this section shall give Covered Entity the right to terminate this Agreement immediately for cause.

10. **Further Assurances**

The parties agree that from time to time they will amend the Agreement to account for changes in the applicable law or regulations arising out of the HIPAA law and that on and after the effective date of this Agreement, such then applicable provisions of the HIPAA law or its applicable implementing regulations shall be incorporated by reference into the Agreement as written until such time as the parties may amend the Agreement to otherwise specifically provide for the subject matter of such provisions but in no case for a period longer than one year from the effective date of any such statutory or regulatory provision, during which time the parties shall negotiate further assurances in good faith.