

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this "BAA") is entered into by and between E-ssential Networks LLC, a Florida limited liability company ("Business Associate") and the customer identified in the Service Agreement ("Customer") (each a "Part'" and collectively the "Parties"), who entered into the Service Agreement (as defined below) with Business Associate. This BAA hereby amends and is incorporated into the Service Agreement between Customer and Business Associate. To the extent that the provisions of this BAA conflict with those of the Service Agreement, the provisions of this BAA shall control.

RECITALS

WHEREAS, Business Associate now and in the future may have relationships with Customer in which Business Associate creates, receives, maintains, or transmits Protected Health Information (as defined below) for or on behalf of Customer through the performance of the Services (as defined in 2.1 below) to Customer.

WHEREAS, Business Associate and Customer desire to meet their obligations, to the extent applicable, under the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Rule") and the Security Standards for the Protection of Electronic Health Information (the "Security Rule") published by the U.S. Department of Health and Human Services ("HHS") at 45 C.F.R. parts 160 and 164 under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH") and implementing regulations.

WHEREAS, the Parties desire to set forth the terms and conditions pursuant to which Protected Health Information received from, or created, received, maintained, or transmitted by the Business Associate on behalf of, the Customer, will be used and disclosed.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS AND CONDITIONS

1. Definitions

1.1 Unless otherwise specified in this BAA, all capitalized terms used in this BAA but not otherwise defined shall have the same meanings as those terms are defined in HIPAA and HITECH, as each is amended from time to time.

1.2 "Breach" shall mean the acquisition, access, use or disclosure of Protected Health Information in a manner not permitted by the Privacy Rule that compromises the security or privacy of the Protected Health Information as defined, and subject to the exceptions set forth, in 45 C.F.R. 5 164.402.

1.3 "Electronic Protected Health Information" shall mean Protected Health Information or PHI, as defined in Section 1.5, that is transmitted or maintained in electronic media, including but not limited to, hard drives, disks, on the internet, or on an intranet.

1.4 "HITECH" shall mean Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, 42 U.S.C. 5517921-17954, and any and all references in this BAA to sections of HITECH shall be deemed to include all associated existing and future implementing regulations, when and as each is effective.

1.5 "Protected Health Information" or "PHI" shall mean Protected Health Information, as defined in 45 C.F.R. 5 160.103, and is limited to the Protected Health Information received from, or created, received, maintained, or transmitted on behalf of, Customer by Business Associate pursuant to performance of the Services.

1.6 "Privacy Rule" shall mean the federal privacy regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, codified at 45 C.F.R. Parts 160 and 164 (Subparts A & E).

1.7 "Security Rule" shall mean the federal security regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, codified at 45 C.F.R. Parts 160 and 164 (Subparts A & C).

2. Permitted Uses and Disclosures of Protected Health Information

2.1 Services.

(a) Business Associate provides services (which may include, but is not limited to, transaction services, servicing hardware, or software products, and data exchange and analytic services) ("Services") that involve the use and/or disclosure of PHI. These Services are provided to Customer under various agreements (collectively, the "Service Agreement") that specify the Services to be provided by Business Associate. Except as otherwise specified herein, Business Associate may make any and all uses and disclosures of PHI created or received from or on behalf of Customer necessary to perform its obligations under the Service Agreement.

(b) Business Associate may provide Data Aggregation services relating to the Health Care Operations of Customer in accordance with the Privacy Rule.

2.2 Business Activities of the Business Associate. Unless otherwise limited herein, the Business Associate may:

(a) consistent with 45 C.F.R. 5 164.504(e)(4), use and disclose the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate, provided that (i) the disclosures are Required by Law; or (ii) any third party to which Business Associate discloses PHI for those purposes provides reasonable assurances that the information will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the third party, and the third party promptly will notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached; and

(b) de-identify any and all PHI in accordance with 45 C.F.R. 5 164.514(b). Customer acknowledges and agrees that deidentified information is not PHI and that Business Associate may use such de-identified information for any lawful purpose, and there will be no restriction on Business Associate's use or disclosure of the de-identified health information once it has been so de-identified.

3. Responsibilities of the Parties

3.1 Responsibilities of the Business Associate with Respect to PHI. With regard to its use and/or disclosure of PHI, Business Associate agrees to:

(a) not use or further disclose PHI other than as necessary to provide the Services, as permitted or required by this BAA, and in compliance with each applicable requirement of 45 C.F.R. 5 164.504(e) or as otherwise Required by Law; provided that, to the extent Business Associate is to carry out Customer's obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to Customer in the performance of those obligations;

(b) implement and use appropriate administrative, physical, and technical safeguards and comply with the applicable requirements of the Security Rule with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this BAA;

(c) without unreasonable delay, report to the Customer: (i) any use and/or disclosure of the PHI of which Business Associate becomes aware that is not permitted or required by this BAA, in accordance with 45 C.F.R. 5 164.504(e)(2)(ii)(C); and/or (ii) any Security Incident of which Business Associate becomes aware in accordance with 45 C.F.R. 5 164.314(a)(2)(C);

(d) without unreasonable delay, and in any event no later than sixty (60) calendar days after Discovery, Business Associate shall notify Customer of any Breach of Unsecured PHI. The notification shall include, to the extent possible and subsequently as the information becomes available, the information required by 45 C.F.R. 5 164.410;

(e) in accordance with 45 C.F.R. 5 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree, in writing, to the same restrictions and conditions on the use and/or disclosure of PHI that apply to the Business Associate, including complying with the applicable Security Rule requirements with respect to Electronic PHI;

(f) make available its internal practices, books and records relating to the use and/or disclosure of PHI to the Secretary of HHS for purposes of determining the Customer's compliance with the Privacy Rule;

(g) document and within thirty (30) days after receiving a written request from Customer, make available information necessary for Customer to make an accounting of disclosures of an Individual's PHI, in accordance with 45 C.F.R. 5 164.528 and, as of the date compliance is required by final regulations, 42 U.S.C. 5 17935(c);

(h) within fifteen (15) days of receiving a written request from Customer, make available (in accordance with the requirements of 45 C.F.R. 5 164.524) PHI necessary for Customer to respond to Individuals' requests for access to PHI about them, including, providing or sending a copy to a designated third party and providing or sending a copy in electronic format, to the extent that the PHI in Business Associate's possession constitutes a Designated Record Set; and

(i) to the extent that the PHI in Business Associate's possession constitutes a Designated Record Set, make available, within thirty (30) days after a written request by Customer, PHI for amendment and incorporate any amendments to the PHI as directed by Customer, all in accordance with 45 C.F.R. 5 164.526.

3.2 Responsibilities of the Customer with Respect to PHI.

(a) With regard to the use and/or disclosure of PHI by the Business Associate, the Customer agrees: (i) to obtain any consent, authorization, or permission that may be required by the Privacy Rule or any other applicable federal, state or local laws and/or regulations prior to furnishing Business Associate the PHI pertaining to an Individual; and (ii) that it will not furnish Business Associate PHI that is subject to any arrangements permitted or required of the Customer, including but not limited to, arrangements agreed to by Customer under 45 C.F.R. 5 164.522 that may impact in any manner the use and/or disclosure of PHI by the Business Associate under this BAA and the Service Agreement.

(b) Customer represents and warrants that its notice of privacy practices permits Customer to use and disclose PHI in the manner that Business Associate is authorized to use and disclose PHI under this BAA.

4. Term and Termination

4.1 Term. This BAA shall become effective on the date on which both Parties have executed the Service Agreement (the "Effective Date"). This BAA shall continue in effect unless terminated as provided in this Section 4, provided, that certain provisions and requirements of this BAA shall survive the expiration or termination of this Agreement in accordance with Section 6.4 herein.

4.2 Termination. If either Party knows of a pattern of activity or practice of the other Party that constitutes a material breach or violation of this BAA then the non-breaching Party shall provide written notice of the breach or violation to the other Party that specifies the nature of the breach or violation. The breaching Party must cure the breach or end the violation on or before thirty (30) days after receipt of the written notice. In the absence of a cure reasonably satisfactory to the non-breaching Party within the specified timeframe, or in the event the breach is reasonably incapable of cure, then the non-breaching Party may terminate this BAA.

4.3 Automatic Termination. This BAA will automatically terminate with respect to any Business Associate without any further action of the Parties upon the termination or expiration of the Service Agreement between Customer and such Business Associate.

4.4 Effect of Termination or Expiration. Within sixty (60) days after the expiration or termination for any reason of this BAA, Business Associate shall return or destroy all PHI, if feasible to do so, including all PHI in possession of Business Associate's subcontractors. In the event that Business Associate determines that return or destruction of the PHI is not feasible, Business Associate shall notify Customer in writing and may retain the PHI subject to this Section 4.4. Under any circumstances, Business Associate shall extend any and all protections, limitations and restrictions contained in this BAA to Business Associate's use and/or disclosure of any PHI retained after the expiration or termination of this BAA, and shall limit any further uses and/or disclosures solely to the purposes that make return or destruction of the PHI infeasible.

5. Limitation of Liability

BUSINESS ASSOCIATE'S LIABILITY ARISING OUT OF OR RELATED TO THIS BAA, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE, GROSS NEGLIGENCE, OR STRICT LIABILITY), OR UNDER ANY THEORY OF LIABILITY, IS SUBJECT TO THE "LIMITATION OF LIABILITY" SECTION OF THE SERVICE AGREEMENT AND ANY REFERENCE IN SUCH

SECTION TO BUSINESS ASSOCIATE'S LIABILITY MEANS BUSINESS ASSOCIATE'S AGGREGATE LIABILITY UNDER THE SERVICE AGREEMENT AND THIS BAA.

6. Miscellaneous

6.1 Entire Agreement. This BAA and all attachments, schedules and exhibits hereto, together with the Service Agreement, constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes any prior or contemporaneous written or oral memoranda, negotiations, arrangements, contracts or understandings of any nature or kind between the Parties with respect to the subject matter hereof.

6.2 Change of Law. Customer shall notify Business Associate within ninety (90) days of any amendment to any provision of HIPAA or its implementing regulations, and/or HITECH or its implementing regulations, which materially alters either Party's or the Parties' obligations under this BAA. The Parties agree to negotiate in good faith mutually acceptable and appropriate amendment(s) to this BAA to give effect to such revised obligations; provided, however, that if the Parties are unable to agree on mutually acceptable amendment(s) within ninety (90) days of the relevant change of law, either Party may terminate this BAA consistent with Sections 4.3 and 4.4.

6.3 Construction of Terms. The terms of this BAA to the extent they are unclear shall be construed to allow for compliance by Customer and Business Associate with HIPAA and HITECH.

6.4 Survival. The provisions of this BAA that by their context are intended to survive the expiration or termination of this BAA, including, without limitation, Sections 1, 4.4, 5, 6.3, 6.8, 6.10, 6.11, 6.13, and this Section 6.4., will survive the expiration or termination of this Agreement.

6.5 Amendment" Waiver. This BAA may not be modified, nor shall any provision hereof be waived or amended, 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.

6.6 Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Part'/s address given above, and/or via facsimile to the facsimile telephone numbers listed above. Each Party may change its address and that of its representative for notice by the giving of notice thereof in the manner herein above provided.

6.7 Execution in Counterparts: Facsimiles. This BAA may be executed in any number of counterparts, each of which shall be deemed an original and all of which will be one and the same document. Facsimile copies hereof shall be deemed to be originals.

6.8 Disputes. If any controversy, dispute or claim arises between the Parties with respect to this BAA, the Parties shall make good faith efforts to resolve such matters informally.

6.9 Binding Agreement: New Parties: Agency.

(a) This BAA shall be binding upon the Parties and their successors and permitted assigns. Any one or more additional subsidiaries of Business Associate with a relationship with Customer in which such entity creates, receives, maintains or transmits PHI for use in providing services or products to Customer (each a "New Party") may join this BAA as a Party and a Business Associate by executing and delivering a counterpart of this BAA. In addition, Business Associate, from time to time may list on its corporate website its subsidiaries which are business associates for purposes of HIPAA and HITECH compliance ("HIPAA BA Subs"). Each HIPAA BA Sub that creates, receives, maintains or transmits PHI for use in providing services or products to Customer shall be deemed to be a New Party without further action by any Party hereto.

(b) The Parties acknowledge that Business Associate is executing and delivering this BAA solely in its capacity as agent for the Business Associates. Upon Customer's acceptance of this form, an Order Form, or the Services Agreement, this Agreement

will become binding on Customer and Business Associate.

6.10 No Third Party Beneficiaries. Nothing in this BAA shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

6.11 Contradictory Terms. Any other provision of the Service Agreement that is directly contradictory to one or more terms of this BAA (a "Contradictory Term") shall be superseded by the terms of this BAA to the extent and only to the extent of the contradiction, only for the purpose of Customer's compliance with HIPAA and HITECH, and only to the extent reasonably impossible to comply with both the Contradictory Term and the terms of this BAA.

6.12 Independent Contractor. Business Associate and Customer are and shall remain independent contractors throughout the term. Nothing in this BAA shall be construed to constitute Business Associate and Customer as partners, joint venturers, agents or anything other than independent contractors.

6.13 Governing Law and Venue. This BAA shall be governed by and construed in accordance with the laws of the state of California without regard to the conflicts of law principles of such state. Any suit brought herein shall be brought in the state or federal courts located in Los Angeles County, California.

6.14 Privacy Contact. Customer acknowledges and agrees that Business Associate and Customer may update their privacy contacts from time to time, depending on changes to the business. Customer may contact info@essentialnetworks.com for any inquiries related to this Business Associate Agreement.