

GARGLE, INC
HIPAA BUSINESS ASSOCIATE AGREEMENT

1. Parties; Applicability.
 - a. Parties. This HIPAA Business Associate Agreement (this "BA Agreement") is between you, the Customer ("Covered Entity"), a health care provider, and Gargle, Inc. ("Gargle"), a healthcare marketing company.
 - b. Applicability. Gargle and Covered Entity have entered a software license agreement (the "License Agreement") pursuant to which Gargle licenses software to Covered Entity. Consequently, Gargle may, but will not necessarily, provide software and hardware support services (e.g., installation, data conversion, troubleshooting, maintenance and repair) (the "Services") to Covered Entity in a manner that gives Gargle access to Protected Health Information ("PHI") as defined under 45 C.F.R § 160.103. The terms of this BA Agreement apply only if and to the extent Covered Entity licenses the Gargle software for use in the United States and Gargle is a Business Associate of Covered Entity pursuant to 45 CFR § 160.103 as a consequence of its access to information covered by applicable provisions of HIPAA or HITECH (as defined below).
 - c. Effect. This BA Agreement amends, restates and replaces in its entirety any prior business associate agreement between the parties. This BA Agreement supersedes all prior or contemporaneous written or oral contracts or understandings between Gargle and Customer relating to their compliance with health information confidentiality laws and regulations, including HIPAA and HITECH.
2. Definitions. Capitalized terms used but not otherwise defined in this BA Agreement have the meanings given those terms in HIPAA and HITECH. As used in this BA Agreement, the terms below have the following meanings:

"Breach" has the meaning given in 45 CFR § 164.402.

"Business Associate" means Gargle to the extent Gargle qualifies as a Business Associate of Covered Entity as defined in 45 CFR § 160.103.

"Designated Record Set" has the meaning given in 45 CFR § 164.501. "HHS" means the United States Department of Health and Human Services.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended, and its implementing rules and regulations, including the HIPAA Breach Notification Rule, the HIPAA Privacy Rule, and the HIPAA Security Rule.

"HIPAA Breach Notification Rule" means the Breach Notification for Unsecured Protected Health Information issued by HHS, 45 CFR Parts 160 and 164 (Subparts A and D).

"HIPAA Omnibus Rule" means the Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule issued by HHS, 45 CFR Parts 160 and 164.

"HIPAA Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information regulations issued by HHS, 45 CFR Parts 160 and 164 (Subparts A and E).

"HIPAA Security Rule" means the Security Standards for the Protection of Electronic Protected Health Information issued by HHS, 45 CFR Parts 160 and 164 (Subparts A and C).

"HITECH" means the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A of the American Recovery and Reinvestment Act of 2009 and its implementing regulations.

"PHI" or "Protected Health Information" and "Electronic PHI" have the respective meanings given in 45 CFR § 160.103, except that each is limited to PHI (and Electronic PHI) that Business Associate creates, receives, maintains, transmits or collects for or on behalf of Covered Entity.

"Required by Law" has the meaning given in 45 CFR § 164.103. "Subcontractor" has the meaning given in 45 CFR § 160.103. "Unsecured PHI" has the meaning given in 45 CFR § 164.402. C. Business Associate's Privacy Rule Obligations.

3. Business Associate's Privacy Rule Obligations.

- a. Business Associate's Obligations with Respect to the HIPAA Privacy Rule. Business Associate will comply with the privacy requirements that are directly imposed on Business Associate by HITECH § 13404 subsection (a).
- b. Use and Disclosure of PHI. Business Associate agrees not to use or disclose PHI other than as permitted or required by this BA Agreement or as Required by Law. Business Associate may:
 - i. use or disclose PHI to perform the Services for, or on behalf of, Covered Entity, provided that such use or disclosure would not violate the HIPAA Privacy Rule if done by Covered Entity;
 - ii. use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate and disclose PHI for the proper management and administration of 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;
 - iii. use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B); and
 - iv. use PHI to report violations of law or certain other conduct to appropriate federal and state authorities or other designated officials in a manner consistent with 45 CFR § 164.502(j)(1).
- c. Compliance While Carrying Out Obligations of Covered Entity. Where applicable, and to the extent the Business Associate carries out one or more of Covered Entity's obligation(s) under the HIPAA Privacy Rule, Business Associate shall comply with the requirements of

the HIPAA Privacy Rule that apply to the Covered Entity in the performance of such obligation(s).

- d. De-Identified PHI. PHI that has been de-identified within the meaning of 45 CFR § 164.514(b) is no longer PHI and may be used or disclosed by Business Associate for any lawful purpose.
- e. Safeguards to Protect PHI. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this BA Agreement.
- f. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this BA Agreement.
- g. Report Violation. Business Associate agrees to report to Covered Entity any use or disclosure of PHI not permitted by this BA Agreement of which it becomes aware, including any such use or disclosure by any Subcontractor of Business Associate.
- h. Apply Same Restrictions to Subcontractors. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any Subcontractor that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such PHI.
- i. Provide Access to PHI in a Designated Record Set. To the extent that Business Associate has PHI in a Designated Record Set and Covered Entity does not maintain the original, Business Associate agrees to provide access to such PHI as Covered Entity may require to fulfill its obligations under 45 CFR § 164.524. If Business Associate receives a request for access directly from Covered Entity's patient, Business Associate will promptly notify Covered Entity of such request. In addition, to the extent that such PHI is contained in an Electronic Health Record, Business Associate will provide access in accordance with HITECH, provided that Business Associate has retained the information.
- j. Amend PHI in a Designated Record Set. To the extent that Business Associate has PHI in a Designated Record Set, Business Associate agrees to amend such PHI as directed by Covered Entity and in accordance with 45 CFR § 164.526. If Business Associate receives a request for amendment directly from Covered Entity's patient, Business Associate will promptly notify Covered Entity of such request.
- k. Make Practices, Books and Records Available to Secretary of HHS. Business Associate agrees to make internal practices, books, and records, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, available to the Secretary of HHS for purposes of determining Covered Entity's and Business Associate's compliance with HIPAA and HITECH, subject to attorney-client and other legal privileges.
- l. Document Disclosures of PHI for Accounting of Disclosures. Business Associate agrees to document disclosures of PHI as required for Covered Entity to comply with 45 CFR § 164.528. Business Associate agrees to promptly provide such information to Covered Entity to permit Covered Entity to respond to a patient request for an accounting of disclosures. If Business Associate receives a request for an accounting of disclosures directly from Covered Entity's patient, Business Associate will promptly notify Covered Entity of such request.

- m. Meet Minimum Necessary Use and Disclosure Requirements. Business Associate will make reasonable efforts to use, disclose, or request only the minimum PHI necessary to accomplish the purpose of the use, disclosure or request in accordance with 45 CFR § 164.502(b), including using a Limited Data Set when practicable as described under HITECH.
 - n. Restrict Use or Disclosure of PHI for Sale, Marketing or Fundraising. Business Associate will not use or disclose PHI for sale, marketing or fundraising in violation of the HIPAA Omnibus Rule.
- 4. Business Associate's Security Rule Obligations.
 - a. Business Associate's Obligations with Respect to the HIPAA Security Rule. Business Associate shall use appropriate safeguards, and comply with the HIPAA Security Rule with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this BA Agreement.
- 5. Breach Notification Responsibilities.
 - a. Business Associate's Notice of Breach to Covered Entity. When Business Associate or its Subcontractor discovers a Breach of Unsecured PHI, Business Associate will notify Covered Entity in writing without unreasonable delay but no later than sixty (60) calendar days following the date of discovery of the Breach. To the extent information is available to Business Associate, the notice to Covered Entity will include the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach and a brief description of what happened, including the date of the Breach, the date of discovery, a general description of the Unsecured PHI or other sensitive data (such as Social Security or account numbers) involved in the Breach, and any other information required to be disclosed under 45 CFR § 164.410.
 - b. Covered Entity's Notice of Breach. Covered Entity will be responsible for providing notice of the Breach to HHS or the media as required by the HIPAA Breach Notification Rule. Covered Entity will also be responsible for providing any additional notice of a breach required of Covered Entity by applicable state law. Covered Entity may request Business Associate to assist with its notice obligations. Business Associate will promptly notify Covered Entity of the assistance it will provide in this regard.
- 6. Obligations of Covered Entity Regarding PHI. To the extent that it may impact Business Associate's use or disclosure of PHI, Covered Entity agrees to inform Business Associate in writing of: any limitation in its Notice of Privacy Practices; any changes to or revocation of a patient's authorization with respect to PHI; any restriction to a use or disclosure agreed to by Covered Entity with respect to a patient's PHI; and any opt-out by a patient from marketing or fundraising activities by Covered Entity. Covered Entity will not ask Business Associate to use or disclose PHI in any manner that would not be permitted under HIPAA if done by Covered Entity. Covered Entity will disclose PHI to Business Associate in accordance with HIPAA and HITECH and will be responsible for using appropriate safeguards to maintain the confidentiality, privacy and security of PHI transmitted or disclosed to Business Associate.
- 7. Term and Termination.
 - a. Term. This BA Agreement shall continue in effect until the License Agreement terminates, or Gargle no longer provides Services to Covered Entity, or this BA Agreement

- terminates pursuant to Section 7b.
- b. 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 BA Agreement, 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, then the non-breaching party may do the following:
 - i. if feasible, terminate this BA Agreement and the provision of Services by Gargle to Covered Entity; or
 - ii. if termination of this BA Agreement or the provision of Services is not feasible, report the problem to HHS.
 - c. Effect of Termination or Expiration. Within thirty (30) days after the termination or expiration of this BA Agreement, Business Associate shall return or destroy all PHI, if feasible to do so, including all PHI in possession of Business Associate's Subcontractors. If return or destruction of the PHI is not feasible, Business Associate shall notify Covered Entity in writing of the reasons return or destruction is not feasible and Business Associate shall extend any and all protections, limitations and restrictions contained in this BA Agreement to Business Associate's use and/or disclosure of any PHI retained after the termination or expiration of this BA Agreement, and to limit any further uses and/or disclosures solely to the purposes that make return or destruction of the PHI not feasible.
8. Miscellaneous.
- a. Statutory and Regulatory References. Each reference in this BA Agreement to any provision of HIPAA or HITECH means such provision(s) as amended from time to time.
 - b. Amendment of BA Agreement. This BA Agreement may be amended only in a writing agreed to by both Gargle and Covered Entity. If it becomes necessary to amend this BA Agreement in order to comply with applicable provisions of HIPAA or HITECH, either party may provide written notice to the other party of the proposed amendment. If the other party does not object to the proposed amendment within 30 business days of receiving the written notice, the amendment will go into effect as of the date provided in the amendment. If the other party does object within such 30 business days, the parties will negotiate in good faith to amend the BA Agreement in a manner that complies with applicable provisions of HIPAA and HITECH. The parties agree to take such action as is necessary to implement the applicable standards and requirements of HIPAA and HITECH.
 - c. Interpretation. This BA Agreement shall be construed in accordance with applicable provisions of HIPAA and HITECH and HHS guidance interpreting same. Any ambiguity in this BA Agreement shall be resolved to permit the parties to comply with applicable provisions of HIPAA and HITECH. The provisions of this BA Agreement will prevail over any contrary or inconsistent provision in the License Agreement or related documents with respect to PHI. All other terms of the License Agreement or related documents remain in force and effect.
 - d. No Third-Party Beneficiaries/Assignment. Nothing in this BA Agreement confers on any person other than Covered Entity and Gargle (and their respective successors and assigns) any rights, remedies, obligations or liabilities whatsoever. There are no third-

party beneficiaries to this BA Agreement. Gargle may assign its rights and responsibilities with respect to information covered under this BA Agreement to the fullest extent permitted by applicable law.

- e. Governing Law. Except as preempted by HIPAA or other federal law, this BA Agreement will be governed by the laws of Utah.
- f. State Privacy Laws. Gargle and Covered Entity acknowledge that each is obligated to comply with all applicable state privacy laws and regulations.
- g. Notices. Written notice under this BA Agreement shall be sent by overnight mail or courier to Gargle, Inc, 520 N. Main Str. #501, Heber, UT 84032 and to Covered Entity at the address associated with its Gargle customer number.

Each of the undersigned has caused this BA Agreement to be duly executed in its name and on its behalf effective as of the last date written below ("Effective Date").

Covered Entity

By: _____

Name: _____

Title:

Date:

Customer #

Phone

Last Revised: 19Feb20

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