

Business Associate Agreement

Definitions

The following terms used in this Agreement 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, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

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 Reminder Services, Inc.

(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

(Covered Entity – Print Clearly)

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

Obligations and Activities of Business Associate

Business Associate agrees to not use or disclose protected health information other than as permitted or required by the Agreement or as required by law; Business Associate will 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; Business Associate agrees to 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; In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate 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; Business Associate agrees to 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; Business Associate agrees to 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; Business Associate will maintain and make available the information required to provide an accounting of disclosures to the covered entity as necessary to satisfy covered entity's obligations under 45 CFR 164.528; 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 make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

Permitted Uses and Disclosures by Business Associate

Business associate may only use or disclose protected health information on behalf of, or to provide services to, Covered Entity as specified in the Terms of Service, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. Business associate may use or disclose protected health information as required by law. Business associate agrees to make uses and disclosures and requests for protected health information consistent with covered entity's minimum necessary policies and procedures. 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. 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. Business associate may disclose protected health information for the proper management and administration of business associate or to carry out the legal responsibilities of the business associate, provided the disclosures are required by law, or business associate 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 business associate of any instances of which it is aware in which the confidentiality of the information has been breached. Business associate may provide data aggregation services relating to the health care operations of the covered entity.

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

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. 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. 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. 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.

Term and Termination

(a) **Term.** The Term of this Agreement shall be effective upon the first disclosure of Protected Health Information by covered entity to business associate, and shall terminate when all of the Protected Health Information provided by covered entity to business associate, or created or received by Business Associate on behalf of covered entity, is destroyed.

(b) **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either: Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement or if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or end the violation within 30 days of written notice.

(c) Obligations of Business Associate Upon Termination.

Except as provided in this Business Associate Agreement, upon termination of this Agreement, for any reason, Business Associate shall destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Except as provided in this agreement, Business Associate shall retain no copies of the Protected Health Information. In the event that Business Associate determines that destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make destruction infeasible. Upon termination and that destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information. The rights and obligations of business associate under Section "Effect of Termination" shall survive the termination of this Agreement.

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

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.

Indemnification. Except as otherwise may be provided in this Agreement, each party shall hold the other party harmless for any and all losses, liability, claims, lawsuits, injuries, expenses or damage whatsoever, including but not limited to attorneys' fees and court costs, arising out of the breach of any provision of this Agreement or arising out of the negligence or willful misconduct of the other party, its employees, or agents.

MISCELLANEOUS

- A) Notices. Any notice, demand or communication required, permitted or desired to be given hereunder shall be in writing and shall be delivered personally, by certified mail, return receipt requested, postage prepaid, or by transmission by a telecommunications device, and shall be effective on the earliest of: (a) on the day when personally served, including delivery by overnight mail and courier service; (b) on the third day after its deposit in the United States mail; or (c) on the business day of confirmed transmission by telecommunications device. The addresses of the parties hereto (until notice of a change thereof is served as provided in this Section) shall be as follows:

If to Business Associate:

Reminder Services, Inc.
16165 Monterey Road, Suite 203
Morgan Hill, CA 95037
Attn: Chantal Oicles
Phone: 888-858-6673x1
Email: support@remindercall.com

If to Covered Entity:

Business Name: _____
Address: _____

Attn: _____
Phone: _____
Email: _____

- B) Disclaimer. Business Associate makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA, the HITECH Act, or the HIPAA Regulations

will be adequate or satisfactory for Covered Entity's own purposes. Covered Entity is solely responsible for all decisions made by Covered Entity regarding the safeguarding of PHI.

- C) No Third-Party Beneficiaries. Except as expressly provided for in the Privacy Rule, there are no third party beneficiaries to this Agreement.
- D) Effect on Engagement Agreement. Except as specifically required to implement the purposes of this Agreement, or to the extent inconsistent with this Agreement, all other terms of the Engagement Agreement shall remain in force and effect.
- E) Interpretation. Any ambiguity in this Agreement shall be interpreted to implement and comply with HIPAA and the HITECH Act.
- F) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- G) Venue. The venue for any action concerning this Agreement between the parties hereto shall be Santa Clara County in the state of California.
- H) Mediation. If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation before resorting to arbitration, litigation, or some other dispute resolution procedure.

Effective Date: By signing below, each party acknowledges his/her agreement with the terms and conditions of this Agreement and represents and certifies that he/she is authorized to sign on behalf of and to bind each of the respective parties to all of the terms and conditions of this Agreement as of the Effective Date.

Reminder Services, Inc.
(Business Associate)

(Covered Entity)

Signed:  _____

Signed: _____

Name: Chantal Oicles

Name (print): _____

Title: President

Title: _____

Date: 1/6/2017

Date: _____