



Business Associate Agreement

This NextGate Business Associate Agreement (“BAA”) is entered into by and between NextGate Solutions, Inc., a California corporation with an address at 3579 E Foothill Boulevard, Suite 587, Pasadena, CA 91107 (“NextGate”) and you, and applies to any PHI received, maintained or transmitted by NextGate in providing business associate services in connection with NextGate’s products and services.

Whereas, NextGate and you may be parties to other agreements involving the potential disclosure of PHI, including specific NextGate terms and conditions for NextGate products and services, such agreements collectively to be referred to as the "Underlying Agreements";

Whereas, as used herein, the Privacy Rule and the Security Rule are each deemed to include the amendments thereto that are included in 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 (the "Omnibus Rule"), 78 Fed. Reg. 5565;

Whereas, pursuant to the Privacy Rule and the Security Rule, all Business Associates of Covered Entities must agree in writing to certain mandatory provisions regarding the use and disclosure of PHI;

Whereas, the Health Information Technology for Economic and Clinical Health Act ("HITECH") adopted as part of the American Recovery and Reinvestment Act of 2009 imposes certain requirements on Business Associates with respect to privacy, security and breach notification and contemplates that such requirements shall be implemented by regulations, some of which are included in the Omnibus Rule (all such statutory and regulatory provisions may be referred to collectively as the "HITECH Provisions");

Whereas, the purpose of this BAA is to comply with the requirements of the Privacy Rule, the Security Rule, the Breach Notification Rule (45 C.F.R. §§ 164.400-401), the Omnibus Rule and the HITECH Provisions, including, but not limited to, the Business Associate contract requirements at 45 C.F.R. §164.308(b), §164.314(a), §164.502(e), §164.504(e), and as may be amended, and;

Whereas, the parties also wish to address the privacy and security requirements with respect to each of the Underlying Agreements and to provide an efficient mechanism to address future changes in laws and regulations that relate to HIPAA and HITECH with respect to the Underlying Agreements.

Now, Therefore, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Definitions. Unless otherwise provided in this BAA or set forth in an Underlying Agreement, capitalized terms have the same meanings as set forth in HIPAA, the Privacy Rule, the Security Rule, the Breach Notification Rule, the Omnibus Rule or the HITECH provisions. In addition, the following specific definitions apply:

a. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103.

b. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.

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

2. Scope of Use and Disclosure by NextGate.

2.1 NextGate shall be permitted to Use and Disclose PHI consistent with the Minimum Necessary standard (45 C.F.R §164.502(b)) disclosed to it by you as necessary to perform its obligations under the Underlying Agreements.

2.2 Unless otherwise limited herein, in addition to any other Uses and/or Disclosures permitted or authorized by this BAA, an Underlying Agreement, or Required by Law, NextGate may:

- a) Use and disclose PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of NextGate;
- b) Disclose the PHI in its possession to a third party for the purpose of NextGate's proper management and administration or to fulfill any legal responsibilities of NextGate; provided, however, that the Disclosures are Required by Law or NextGate has received from the third party written assurances that (a) the information will be held confidentially and used or further Disclosed only as Required by Law or for the purposes for which it was Disclosed to the third party; and (b) the third party will notify NextGate of any instances of which it becomes aware in which the confidentiality of the information has been breached.

3. Obligations of NextGate. In connection with its Use and Disclosure of PHI, NextGate agrees that it will:

- a) Use or further Disclose PHI only as permitted or required by this BAA, or as Required by Law, or as allowed in the Underlying Agreements;
- b) Use reasonable and appropriate safeguards and comply, where applicable, with the Security Rule with respect to electronic PHI, to prevent Use or Disclosure of PHI other than as provided for by this BAA or the Underlying Agreements, including implementation of the Administrative, Physical and Technical Safeguards and Requirements of the Security Rule (45 C.F.R. §§164.306-316) that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic PHI that it creates, receives, maintains or transmits on your behalf;
- c) To the extent practicable, mitigate any harmful effect that is known to NextGate of a Use or Disclosure of PHI by NextGate in violation of this BAA;
- d) Report to you any Breaches of Unsecured PHI as required by 45 C.F.R. §164.410;
- e) Require that any subcontractor that creates, receives, maintains or transmits PHI on behalf of NextGate agrees to the same restrictions and conditions that apply to NextGate with respect to such PHI in accordance with the applicable requirements of the Privacy Rule and the Security Rule;
- f) Make available to the Secretary of HHS NextGate's internal practices, books and records relating to the Use and Disclosure of PHI received from or created or received by NextGate on behalf of you for purposes of determining your compliance with the Privacy Rule, the Security Rule and the Breach Notification Rule, subject to any applicable legal privileges;
- g) Within (10) business days of receiving a request from you, make available the information necessary for you to make an accounting of Disclosures of PHI about an individual;
- h) Within ten (10) business days of receiving a written request from you, make available PHI necessary for you to respond to Individuals' requests for access to PHI about them in the event that the PHI in

NextGate's possession constitutes a Designated Record Set; provided, however, that NextGate is not required to provide such access where the PHI contained in a Designated Record Set is duplicative of the PHI contained in a Designated Record Set possessed by you. In such a case, if an Individual makes a request for access pursuant to 45 C.F.R. § 164.524 directly to NextGate, or inquires about his or her right to such access, NextGate will forward such request to you;

i) Within ten (10) days of receiving a written request from you, make PHI available for amendment and incorporate any amendment to the PHI in accordance with the Privacy Rule in the event that the PHI in NextGate's possession constitutes a Designated Record Set; provided, however, that NextGate is not required to provide such access where the PHI contained in a Designated Record Set is duplicative of the PHI contained in a Designated Record Set possessed by you. If an Individual submits a written request for amendment pursuant to 45 C.F.R. § 164.526 directly to NextGate, or inquires about his or her right to amendment, NextGate will forward such request to you.

j) To the extent that NextGate is to carry out an obligation of yours under the Privacy Rule, NextGate shall comply with the requirements of the Privacy Rule that apply to you in the performance of such obligation; and

k) Promptly report to you any Breach of Unsecured PHI after its Discovery and any Security Incident with respect to Electronic PHI of which it becomes aware; provided, however, that NextGate shall not be obligated to report unsuccessful attempts to penetrate computer networks or servers that do not result in loss of data or degradation of computer networks or services. To the extent a determination has been made that patient notification is required in a breach involving NextGate, both parties agree to cooperate on the notification language.

4. Your Obligations. You agree that you:

a) Have included, and will include, in your Notice of Privacy Practices required by the Privacy Rule that you may Disclose PHI for Health Care Operations purposes.

b) Have obtained, and will obtain, from Individuals consents, authorizations and other permissions necessary or Required by Law applicable to you for NextGate and you to fulfill our respective obligations under the Underlying Agreements and this BAA.

c) Will promptly notify NextGate in writing of any restrictions on the Use and Disclosure of PHI about Individuals that you have agreed to that may affect NextGate's ability to perform its obligations under the Underlying Agreements or this BAA.

d) Will promptly notify NextGate in writing of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI, if such changes or revocation may affect NextGate's ability to perform its obligations under the Underlying Agreements or this BAA.

5. Termination.

5.1 Termination for Breach. You and NextGate may each terminate this BAA, in whole or in part, by giving written notice as described below if either of us (the "Terminating Party") determines that the other party (the "Non-Terminating Party") has breached a material term of this BAA. Alternatively, the Terminating Party may choose to provide the Non-Terminating Party with notice of the existence of an alleged material breach and provide the Non-Terminating Party an opportunity to cure the alleged material breach within a specified period. If no cure period was provided or if the Non-Terminating Party fails to cure the breach to the satisfaction of the Terminating Party within the cure period provided, the Terminating Party may immediately thereafter terminate this BAA with respect to, in its discretion, all Underlying Agreements or only the Underlying Agreement with respect to which the breach occurred. Such termination shall be effective as of the date specified in a written notice given

by the Terminating Party to the Non-Terminating Party (the "Termination Notice"). The Termination Notice shall be given as required in the Underlying Agreement.

5.2 Automatic Termination. This BAA will automatically terminate upon the termination or expiration of the Underlying Agreement(s) but only with respect to the PHI that was Used or Disclosed pursuant to the particular Underlying Agreement that has expired or terminated.

5.3 Effect of Termination.

A) If this BAA is completely terminated, it will result in the termination of all Underlying Agreement(s) pursuant to which PHI was disclosed subject to this BAA. If this BAA is terminated only in part, then only the Underlying Agreements related to the terminated portion of this BAA shall be terminated.

B) Upon termination of this BAA or the Underlying Agreement(s), to the extent that NextGate then retains any PHI, NextGate will return or destroy all PHI received from you or created or received by NextGate on behalf of you with respect to the portion of this BAA and the Underlying Agreement(s) being terminated and NextGate will retain no copies of such PHI; provided that if such return or destruction is not feasible, or NextGate is otherwise required by applicable law or contract to retain PHI, NextGate will extend the protections of this BAA to such PHI and limit further Uses and Disclosures to those purposes that make the return or destruction of the information infeasible.

6. Amendment.

6.1 NextGate and you agree to take such action as is necessary to amend this BAA from time to time as is necessary for you and/or NextGate to comply with the requirements of HIPAA, the Privacy Rule, the Security Rule and the HITECH provisions as currently in effect and as they may be amended from time to time, including new laws or regulations that become applicable in the future, and including any interpretations thereof under federal law (each a "Change in Law").

6.2 To the extent necessary to amend this BAA to include specific language to enable you and/or NextGate to comply with any Change in Law, such language shall automatically be deemed incorporated by reference and included in this BAA as of the date required by such Change in Law.

6.3 Notwithstanding Sections 6.1 and 6.2 above, if a party to this BAA (an "Objecting Party") deems compliance with any Change in Law to be impractical or likely to materially increase its costs, risks or obligations under this BAA or any of the Underlying Agreements, the Objecting Party may give written notice to the other party describing its concerns. Upon receipt of such notice, the parties shall negotiate in good faith to develop an amendment to address the concerns of the Objecting Party. If such an amendment is not executed within thirty (30) days of such notice, the Objecting Party may terminate this BAA by written notice to the other party and shall not have any obligation hereunder for early termination.

7. Survival. The obligations of NextGate under Section 5.3 B) of this BAA shall survive any termination of this BAA.

8. Reporting. Notwithstanding anything contained herein to the contrary, the provisions provided herein are not intended to restrict or prevent NextGate from fulfilling its obligation, if any, to make certain disclosures to public officials, in cases of immediate jeopardy/imminent harm or a good faith belief that you have engaged in conduct that is unlawful, violates professional or clinical standards or

potentially endangers one or more patients, workers or the public as allowable under the Privacy Rule (45 C.F.R. §164.502 (j)).

9. 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 and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

10. Independent Contractor. Unless and to the extent otherwise expressly provided in an Underlying Agreement, each party is an independent contractor of the other. The parties note that this characterization of their relationship is consistent with the Omnibus Rule. (See commentary to the Omnibus Rule at 78 Fed. Reg. 5581-5582.).

11. Entire Agreement. This BAA, along with any Underlying Agreement which incorporates this BAA by reference, constitutes the entire understanding and obligation of the parties with respect to the subject matter hereof and supersedes any prior agreements, writings or understandings, whether oral or written with respect to the subject matter hereof.

This Business Associate Agreement was updated August 26, 2021.