

Business Associate Agreement

This Business Associate Agreement (“BAA”) is entered into by and between _____ (“Covered Entity”) and Valhalla Healthcare, Inc. (“Business Associate”), and applies to all services provided to or on behalf of the Covered Entity and relationships between Covered Entity and Business Associate.

Service Provided to Covered Entity: Facilitating healthcare communications between patient, the patient’s provider(s), and the patient’s friends/family.

A. HIPAA and HITECH Dominance. In the event of a conflict or inconsistency between the terms of any other agreement between the parties and this language, this BAA language controls with respect to the subject matter herein. This language is required by the Health Insurance Portability and Accountability Act of 1996, and the Health Information Technology for Economic and Clinical Health Act (found in Title XIII of the American Recovery and Reinvestment Act of 2009) (“HIPAA” and “HITECH”). The parties acknowledge and agree that, beginning with the effective dates under HIPAA and HITECH, Business Associate will comply with its obligations under this BAA and with all obligations of a business associate under HIPAA, HITECH, and any implementing regulations, as they exist at the time this BAA is executed and as they are amended from time to time, for so long as this BAA is in place. (Collectively, HIPAA and HITECH are referred to herein as “HIPAA”). The terms used in this BAA have the same meaning as defined by HIPAA unless the context dictates otherwise.

B. HIPAA Applicability and Scope. For purposes of the obligations under this BAA, the term “Subcontractor” means, collectively, all of the Business Associate’s subcontractors as well as each of their downstream entities. Business Associate and its Subcontractors are directly subject to and must independently comply with the Business Associate provisions of HIPAA irrespective of the provisions contained in this BAA.

C. Protected Health Information. Any Protected Health Information (“PHI”) as defined by HIPAA that, on behalf of Covered Entity, was collected, created, received, maintained, by or transmitted to or from Covered Entity is PHI. For purposes of these obligations PHI means all PHI in Business Associate’s possession or under its control (e.g., employees, workforce members, and subcontractors and their downstream entities) and all PHI collected, created, received, maintained, or transmitted by Business Associate or its Subcontractors on or after the effective date of this HIPAA language.

D. Confidential Information. Confidential Information means and includes (a) any and all information related to patients; (b) any and all information about Covered Entity that is not known to the general public; (c) non-public information that belongs or relates to third parties to whom Covered Entity has an obligation of confidentiality, including software vendors; and (d) non-public information about Covered Entity’s employees or business associates.

E. Employees, Subcontractors, and Disciplinary Action

1. Acts / Omissions. Business Associate will be responsible for all actions and/or omissions by its employees and/or Subcontractor’s employees and is liable to third parties and Covered Entity for any violation of patients’ privacy or security by any person granted access or receive data through Business Associate. For purposes of this BAA, the Business Associate’s employees include its workforce members.

2. Employees. Business Associate agrees to instruct its employees regarding the confidentiality, privacy and security of PHI and the Business Associate’s obligations under this

BAA. Business Associate shall not disclose to its employees or permit them to access, view, obtain, copy, review, or use any PHI that is not necessary to their services to Covered Entity. Business Associate agrees to maintain strict performance standards, including disciplinary actions, with respect to wrongful access to, copying, viewing, misuse, or disclosure of PHI.

3. Workforce Members and Downstream Entities. Business Associate shall ensure its permitted workforce member(s) and Subcontractor(s) (if subcontractors are permitted) that collect, create, receive, maintain, or transmit PHI on behalf of the Covered Entity are advised in writing of Business Associate's obligations with respect to PHI. Business Associate shall require that the permitted Subcontractor(s) agree in writing to the same permissible uses and disclosures of PHI and to the same restrictions, conditions, and obligations that apply to the Business Associate. Business Associate agrees to make a list of such Subcontractors available to Covered Entity upon request.

4. Administrative and Disciplinary Action. Business Associate will take appropriate administrative and disciplinary action with respect to its employee or Subcontractor if a privacy and/or security violation is substantiated.

5. To the extent that this BAA requires Business Associate to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).

F. Permissible Uses of PHI.

1. Using and Disclosing PHI. Business Associate is a person or an organization, other than a member of a Covered Entity's workforce, that performs certain functions or activities on behalf of, or provides certain services to, a Covered Entity that involves the use or disclosure of PHI. The Business Associate may use or disclose PHI as permitted by this BAA or as required by law.

Furthermore, the Business Associate may only use or disclose PHI to the extent that the Covered Entity is permitted to use and disclose PHI, and only if the Covered Entity has delegated that use or disclosure to the Business Associate.

2. Business Associate's Internal Management Uses of PHI. Business Associate may use PHI for internal management and administration of Business Associate and to carry out the legal responsibilities of the Business Associate. Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that 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.

3. Minimum Necessary. Business Associate is permitted to access, use, request, and/or store only the minimum necessary PHI to the extent required to perform its duties under this BAA.

4. Handling PHI. Business Associate agrees to promptly return or destroy any PHI that is erroneously shared or delivered to Business Associate.

5. Data Aggregation. Business Associate is permitted to use PHI for data aggregation for the health care operations of Covered Entity or its own operations. Data aggregation means combining Covered Entity's PHI with another unrelated covered entity's PHI for any purpose.

6. De-Identified – Business Associate Use for Own Purposes. Business Associate agrees not to sell (i.e., receive any direct or indirect remuneration) or use any PHI, de-identified PHI, or data that identifies the Covered Entity for its own purposes or for the benefit of its other customers, without Covered Entity's prior written consent. Provider hereby consents to allow the Business Associate to de-identify PHI and then use it for any purpose, provided that the method of de-identification satisfies the requirements of HIPAA.

7. No Indirect Sale of PHI. Business Associate has not given Covered Entity a discount or reduction in pricing in exchange for purposes other than services to or on behalf of Covered Entity.

G. Safeguards, Reporting, and Mitigation

1. Safeguards and Security. Business Associate agrees to implement reasonable administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of all PHI. Business Associate agrees to implement reasonable electronic security practices for Covered Entity PHI which is transmitted, stored, collected, created, received, maintained, or used in electronic form. Business Associate also shall require its permitted Subcontractor(s) to agree in writing to implement reasonable administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of all Covered Entity's PHI. The Business Associate agrees to encrypt PHI transmitted by the Business Associate to the Covered Entity over a public network.

2. Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for in connection with this BAA or performance of the services, of which it becomes aware, including breaches of unsecured PHI as required by 45 CFR 164.410; provided that notice is hereby deemed given for Unsuccessful Security Incidents, defined as a security incident that does not result in the unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, including (without limitation) activity such as pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, interception of encrypted information where the key is not compromised, denial of service attacks, and/or any combination of the above. This notice shall satisfy any notices required of Business Associate to Covered Entity of the ongoing existence and occurrence of Unsuccessful Security Incidents, for which no additional notice to Covered Entity shall be given or required.

3. Notification of a breach of unsecured PHI under 45 CFR 164.410 will be made without unreasonable delay, but in no event more than sixty (60) calendar days after Business Associate's discovery of such a breach and will be delivered to Covered Entity by means selected by Business Associate, including via email. Business Associate's obligation to report under this Section shall not be construed as an acknowledgment by Carbonite of any fault or liability with respect to any use or disclosure of PHI, or security incident or breach related thereto.

4. Content – Reporting of Actual or Suspected Violations. The Business Associate shall report to the Covered Entity, to the best extent reasonably possible, the identification of each individual whose PHI or ePHI has been, or is reasonably believed by the Business Associate, to have been accessed, acquired, or disclosed in connection with an actual or suspected breach of the Privacy Rule, the Security Rule, or HITECH. Business Associate shall also provide Covered Entity with

any other available information that Covered Entity is required to include in a notification to an individual.

5. Mitigation. Business Associate agrees to cooperate and collaborate reasonably with the Covered Entity in mitigating any harmful effect that is known to Business Associate, including known to its employees/ Subcontractors, of a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA. Business Associate also agrees to be responsible for any mitigation or compliance costs related to a breach of privacy or security caused by the Business Associate or its Subcontractors.

H. Legal Contact and Pattern of Activity.

1. Notice of Legal Contact. Business Associate shall promptly notify Covered Entity in writing of a disclosure request prior to disclosing Covered Entity PHI if such disclosure is required by law or court order, to the extent as permitted by law.

2. Pattern of Activity. If Business Associate becomes aware of a pattern of activity or practice by any entity, including Covered Entity, that constitutes a material breach or violation of the HIPAA, Business Associate shall: notify Covered Entity of the same; refrain from exchanging any PHI with such entity; upon becoming aware of such behavior by an entity with which Business Associate has already exchanged PHI, take reasonable steps to cure the breach or end the violation, as applicable, and if such steps are unsuccessful, terminate the contract or arrangement with such entity, if feasible; or if termination is not feasible, report the problem to the Secretary of the Department of Health and Human Services, in accordance with Section 13404 of the HITECH Act and 45 C.F.R §164.504(e).

I. Patient Rights With Respect To PHI. Upon request, the Business Associate shall make PHI in its possession or under its control available to the Covered Entity within ten (10) business days of a Covered Entity's request.

1. Notice of Patient Contact. Business Associate shall promptly notify the Privacy Officer of Covered Entity if a patient contacts Business Associate in connection with the patient's PHI.

2. Covered Entity shall be responsible for communicating with patients regarding their patient rights.

3. Covered Entity's Obligations.

i. To the extent that the Covered Entity has any limitations and/or restrictions that affect the Business Associate's use or disclosure of PHI, the Covered Entity shall so notify the Business Associate of such limitations and/or restrictions, and Business Associate shall comply with the same.

II. THE COVERED ENTITY HEREBY REPRESENTS AND WARRANTS THAT THERE ARE AND, FOR THE TERM OF THIS BAA, WILL BE NO LIMITATIONS OR RESTRICTIONS LISTED ON THE COVERED ENTITY'S NOTICE OF PRIVACY PRACTICES AND NO LIMITATIONS OR RESTRICTIONS AGREED UPON WITH A SPECIFIC PATIENT THAT WOULD AFFECT THE BUSINESS ASSOCIATE'S USE OR DISCLOSURE OF PHI.

4. If the Business Associate is engaged to maintain PHI in a designated record set, then the Business Associate agrees to honor patient rights under HIPAA.

5. Business Associate will make PHI available in electronic format upon request by Covered Entity in accordance with 45 C.F.R. §164.524 and Section 13405(e) of HITECH.

6. **Electronic Health Records Related to Treatment, Payment, or Operations.** In the case of a direct request for an accounting from an individual to Business Associate related to treatment, payment, or health care operations disclosures from electronic health records, Business Associate shall, in collaboration with the Covered Entity, provide such accounting to the individual in accordance with 45 C.F.R. §164.528 and Section 13405(c) of HITECH. Business Associate shall document such disclosures and provide Covered Entity notice of the disclosure in accordance with 45 C.F.R. §164.528 and Section 13405(c) of HITECH.

J. **Amendment.** Upon enactment of any law, regulation, court decision or relevant government publication and/or interpretive policy affecting the use or disclosure of PHI, Covered Entity, by written notice to Business Associate, may amend or replace this BAA in such manner as Covered Entity determines necessary to comply with same.

K. **Assignment.** Covered Entity hereby provides express written consent to permit Business Associate to assign any and all rights, and to delegate any and all duties, under this BAA.

L. **Laws.** Business Associate will comply with all applicable federal and state security and privacy laws that are more protective of individual privacy and security than HIPAA.

M. **Termination of Relationship.**

1. **Immediate Termination and Cure.** Either party hereto may immediately terminate its relationship with the other party upon written notice to the other party without damages, liability, or penalty if the first party determines that the other party has violated a material requirement related to HIPAA.

2. **PHI Obligations upon Termination or Expiration.** Upon termination of this BAA for any reason, Business Associate, with respect to PHI received from the Covered Entity, or created, maintained, or received by Business Associate on behalf of the Covered Entity, shall:

i. Retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities (including without limitation contractual obligations to patients who wish to continue using Business Associate's services);

ii. Destroy the remaining PHI that Business Associate still maintains in any form;

iii. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;

iv. Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at Section F.2 hereof that applied prior to termination; and

v. Destroy the PHI 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 (including without limitation contractual obligations to patients who wish to continue using Business Associate's services).

3. Business Associate shall not transfer possession, custody, or control of Covered Entity's PHI to any other person or entity without prior written approval of Covered Entity. If at any time Business Associate determines it is unable to protect the Covered Entity's PHI in accordance with the terms of this BAA, Business Associate shall destroy all Covered Entity PHI and all copies thereof and promptly provide proof of such destruction to Covered Entity.

4. Either party may terminate this BAA effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA or other security or privacy laws or (ii) there is a finding or stipulation that the other party has violated any standard or requirement of HIPAA or other security or privacy laws in any administrative or civil proceeding in which that other party is involved.

5. Termination of Other Agreements. If this BAA is terminated for any reason, either party may immediately terminate any or all other agreements between the parties which involve the use or disclosure of PHI. This provision shall supersede any termination provision to the contrary which may be set forth in any other agreement.

N. Offshore Disclosure and Written Authorization. Prior express written authorization from Covered Entity, in addition to this BAA, is required for Business Associate to access, store, share, maintain, transmit or use or disclose PHI in any form via any medium with any entity or person, including the Business Associate's employees and Subcontractors, beyond the boundaries and jurisdiction of the United States.

O. Information System Access. This paragraph only applies in cases where the Business Associates' employees and/or its Subcontractors' employees will be provided within continuous log-on access to the Covered Entity's internal information system ("Information System"):

1. Policies and Procedures. Business Associate agrees to comply with all of the Covered Entity's policies and procedures applicable to accessing, using or connecting to any Covered Entity Information System.

2. Security Codes and Passwords. Business Associate agrees that its employees will only use their access security codes or passwords to perform their duties under this BAA and that employees are strictly prohibited from disclosing their security codes or passwords to anyone, including family, friends, fellow workers (other than the system security administrator), supervisors, and subordinates for any reason. Business Associate agrees its employees will keep their security codes and passwords in confidence and not misuse or attempt to alter Covered Entity's Information System in any way.

3. Use of Access. Business Associate agrees to use its access to Covered Entity's Information Systems and Confidential Information only for treatment, payment, and operations purposes permitted by HIPAA for Covered Entity's patients or to perform services for Covered Entity. Business Associate will access, use, or disclose patient or business information obtained using access to the Information Systems only for the legitimate health care purposes of the Business Associate or to perform services for Covered Entity, and will only use or disclose the minimum necessary amount of information needed for the purposes identified.

4. Training. Business Associate will provide training to its employees and Subcontractors on their responsibilities for proper use of Covered Entity's Confidential Information and Information Systems.

5. Confidentiality Agreement for Individuals. Business Associate will require each of Business Associate's employees and Subcontractors with continuous log-on access to Covered Entity's Confidential Information and Information Systems to sign and return the Covered Entity's "Confidentiality Agreement" prior to being given continuous log-on access to the Information Systems (e.g., login ID and password).

P. Network Connection. This paragraph only applies in cases where the Business Associate is permitted to access Covered Entity Confidential Information via a network connection (the "Covered Entity Network"), the following provisions apply:

1. Personal Benefit. Business Associate shall not at any time or in any manner, either directly or indirectly, use for the personal benefit of Business Associate, distribute, sell, market or commercialize Covered Entity Confidential Information, create derivative products or applications based on Covered Entity Confidential Information or otherwise use Covered Entity Confidential Information in any manner not expressly permitted by this BAA.

2. Permitted Purposes of Connection. Business Associate will use or disclose PHI obtained from the Covered Entity Network only for the legitimate health care purposes of

i. Treatment, payment, and operations of the Business Associate,

ii. To perform services for Covered Entity related to treatment, payment, and operations, and/or

iii. To perform services for a health care provider that shares patients with the Covered Entity related to treatment, payment, and operations of that provider.

Q. Miscellaneous.

1. Relationship of the Parties. Business Associate and Covered Entity shall not be deemed to be partners, joint venturers, agents, or employees of each other by virtue of the terms and conditions of this BAA or any underlying agreement for services.

2. Governing Law and Venue. The provisions contained in the Terms of Use signed by the Covered Entity and Business Associate that pertain to governing law, venue, and jurisdiction are hereby incorporated into this BAA.

3. Survival. The respective rights and obligations of the parties under this BAA, including without limitation the obligations of the Business Associate under Section Termination of Relationship, shall survive termination of the BAA to the extent necessary to fulfill their purposes.

COVERED ENTITY:

Signature: _____

Name: _____

Title: _____

Date: _____

BUSINESS ASSOCIATE:

Valhalla Healthcare, Inc.

Signature: _____

Name: _____

Title: _____

Date: _____