

## **HIPAA BUSINESS ASSOCIATE AGREEMENT**

This HIPAA Business Associate Agreement (“Agreement”) is by and between \_\_\_\_\_ (“Covered Entity”) and Xelex Digital, LLC (“Business Associate”), and is effective as of \_\_\_\_\_.

**WHEREAS**, the Business Associate will provide certain services (“Services”) to, for, or on behalf of Covered Entity involving the use or disclosure of Protected Health Information (“PHI”) as defined below, and pursuant to the provision of Services, Business Associate may be considered a “Business Associate” of Covered Entity as defined below;

**WHEREAS**, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the provision of Services in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and the Standards for Privacy of Individually Identifiable Health Information promulgated thereunder by the U.S. Department of Health and Human Services at 45 CFR part 160 and part 164, subparts A and E (the “Privacy Rule”) and other applicable laws;

**WHEREAS**, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the Privacy Rule, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations (“CFR”), as the same may be amended from time to time;

**NOW, THEREFORE**, Covered Entity and Business Associate agree as follows:

### **1. Definitions.**

- A. "Business Associate" shall have the meaning given to such term under the Privacy and Security Rules, including but not limited to, 45 CFR §160.103.
- B. "Covered Entity" shall have the meaning given to such term under the Privacy and Security Rules, including, but not limited to, 45 CFR §160.103.
- C. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- D. "Privacy rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164.
- E. "Protected Health Information" or "PHI" means any information, transmitted or recorded in any form or medium; (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations at 45 CFR Parts 160, 162 and 164, including, but not limited to 45 CFR §164.501.
- F. "Security Rule" shall mean the Security Standards at 45 CFR Parts 160, 162 and 164.
- G. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR Parts 160, 162 and 164.

### **2. Obligations of Business Associate.**

The Parties hereby agree that Business Associate shall be permitted to access, use and/or disclose PHI provided by or obtained on behalf of Covered Entity for the following stated purposes, except as otherwise limited in this Agreement:

- a) Permitted Uses and Disclosures. Business Associate contracts with and provides digital data movement, access and storage services via its web-based portal, to medical transcriptionists, medical transcription companies, health care providers, and other Covered Entities and Business Associates that use and access PHI.
  - i) In the course of providing services to its clients, including Covered Entity, Business Associate, its employees, representatives, agents and subcontractors occasionally are required to access PHI. Business Associate ensures that in such cases its agents and subcontractors who access PHI agree to the same terms and conditions as are applicable to the Business Associate as set forth herein.
  - ii) As a provider of a HIPAA compliant environment to Covered Entity, Business Associate agrees to provide the following compliance standards for the access of PHI via its web-based portal:
    - (1) Access to PHI via Business Associate's web-based portal will be password protected and said password shall be encrypted at 128bit or higher, and will remain in encrypted format within the Business Associate's database.
    - (2) Document access will be recorded via an audit trail associated with every document, and all user access to PHI will be captured and stored within said audit trail and available to Covered Entity.
    - (3) PHI will be retained in an encrypted format while residing on Business Associate's servers.
    - (4) Audio dictations of PHI will be destroyed (30) days after receipt and reporting and/or inspection related to purged data is available upon request of Covered Entity.
    - (5) PHI in document form is retained on Business Associate's servers for the duration of relationship with Covered Entity. Upon termination of relationship, PHI in document form will be destroyed in accordance with Section 5.e.1 of this agreement.
- b) Nondisclosure. Business Associate shall not use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law.
- c) Safeguards. Business Associate shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, including, but not limited to, the safeguards listed above.
- d) Reporting of Disclosures; Mitigation. Business Associate shall report to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware. 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 Agreement.
- e) Business Associate's Agents. Business Associate shall ensure that any agents or employees of Business Associate, including subcontractors, to whom it provides PHI received from (or created or received by Business Associate on behalf of) Covered Entity agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI.

- f) Availability of Information to Covered Entity. Business Associate shall make available to Covered Entity (or, as directed by Covered Entity, to an Individual) such information as Covered Entity may request, and in the time and manner, to fulfill Covered Entity's obligations (if any) to provide access to, provide a copy of, and account for disclosures with respect to PHI pursuant to HIPAA and the Privacy Rule, including, but not limited to, 45 CFR §§ 164.524 and 164.528.
- g) Amendment of PHI. Business Associate shall make any amendments to PHI in a designated record set that the Covered Entity directs or agrees to at the request of Covered Entity or an Individual, and in the time and manner to fulfill Covered Entity's obligations (if any) to amend PHI pursuant to HIPAA and the Privacy Rule, including, but not limited to, 45 CFR § 164.526, and Business Associate shall, as directed by Covered Entity, incorporate any amendments to PHI into copies of such PHI maintained by Business Associate.
- h) Internal Practices. Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from Covered Entity (or created or received by Business Associate on behalf of Covered Entity) available to the Secretary, in a time and manner designated by Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with HIPAA and the Privacy Rule.
- i) Documentation of Disclosures for Accounting. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- j) Access to Documentation for Accounting. Business Associate agrees to provide to Covered Entity or an Individual information collected in accordance with Section 2(i) of this Agreement in a time and manner so as to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- k) Notification of Breach. During the term of this Agreement, Business Associate shall notify Covered Entity within twenty-four (24) hours of knowing of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI and/or knowing of any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Business Associate shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

### **3. Obligations of Covered Entity.**

- a) Covered Entity shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Business Associate pursuant to the provision of Services and this Agreement, in accordance with the standards and requirements of HIPAA and the Privacy Rule, until such PHI is received by Business Associate.
- b) Upon request, Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.
- c) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses or disclosures.
- d) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, if such restriction affects Business Associate's permitted or required uses or disclosures.

### **4. Audits, Inspection and Enforcement.** From time to time, but not more than once in

any twelve month period unless otherwise required by HIPAA, upon reasonable notice, Covered Entity may inspect the facilities, books and records of Business Associate related to Business Associate's performance of this Agreement to monitor compliance with this Agreement. All such books and records of Business Associate are highly confidential and Covered Entity shall not disclose any information contained therein or with respect to Business Associate's facilities, books and records to any third party, except as required by law. Covered Entity shall use all reasonable measures to maintain the confidentiality of Business Associate's books and records and only allow access to Business Associate's facilities, books and records or disclose information with respect to Business Associate's facilities, books and records to employees that have a need to know such information. Business Associate shall promptly remedy any violation of this Agreement and shall certify the same to Covered Entity in writing. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities and procedures does not relieve Business Associate of its responsibility to comply with this Agreement, nor does Covered Entity's failure to detect, or detection but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under this Agreement.

## **5. Term and Termination.**

a. **Term.** The Term of this Agreement shall become effective as of the date of this Agreement and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of this Section. The provisions of this Agreement shall survive termination of any provision of Services to the extent necessary for compliance with HIPAA and the Privacy Rule.

b. **Material Breach.** A breach by either party of any provision of this Agreement shall constitute a material breach, if such breach is not cured by the breaching party within thirty days of receipt of notice describing the material breach.

c. **Reasonable Steps to Cure Breach.** If Covered Entity learns of an activity or practice of Business Associate that constitutes a material breach or violation of the Business Associate's obligations under the provisions of this Agreement, then Covered Entity shall notify Business Associate of the breach and Business Associate shall take reasonable steps to cure such breach or end such violation, as applicable, within a period of time which shall in no event exceed thirty (30) days. If Business Associate's efforts to cure such breach or end such violation are unsuccessful and Business Associate has violated the Privacy Rule, Covered Entity shall report Business Associate's breach or violation to the Secretary.

d. **Judicial or Administrative Proceedings.** Either party may terminate the provision of Services, effective immediately, if the other party is named as a defendant in a criminal proceeding for an alleged violation of HIPAA, or a finding or stipulation that the other party has violated any standard or requirement of HIPAA or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

e. **Effect of Termination.**

1. Except as provided in paragraph 2 of this Section 5(e) or if required by law or regulation to be maintained by Business Associate, upon termination of the provision of Services for any reason, Business Associate shall return at Covered Entity's expense or destroy all PHI received from Covered Entity (or created or received by Business Associate on behalf of Covered Entity) that Business Associate still maintains in any form, and shall retain no copies of such PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. The obligations of Business Associate under this Section 5(e)(2) shall survive the termination of any provision of Services.

**6. Limitation of liability.** In no event shall business associate (or any director, officer or employee or any entity controlling, controlled by or under common control with business associate) be liable to covered entity or to any third party for any special, consequential, incidental, or indirect damages, however caused and under any theory of liability arising out of this agreement, whether or not advised of the possibility of such damages, and notwithstanding any failure of essential purpose of any limited remedy. In the event that business associate is held liable arising out of or relating to this agreement or the obligations of business associate under this agreement, business associate's aggregate liability under any legal theory, including tort claims, shall not exceed the fees paid and to be paid by covered entity pursuant to the services agreement within the twelve month period prior to such event occurring that gives rise to such liability.

**7. Certification.** To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA or the Privacy Rule relating to certification of its security practices, Covered Entity or its authorized agents or contractors may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the Privacy Rule and/or this Agreement.

**8. Amendment to Comply with Law.** The parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the Privacy Rule and other applicable laws relating to the security or confidentiality of PHI.

**9. Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself, and any subcontractors, consultants, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon claimed violations of HIPAA, the Privacy Rule or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is a named adverse party or there exists a conflict or potential conflict between the parties; provided, however, that Covered Entity pays Business Associate, its subcontractors or consultants their current rate for their time and reimburses for all reasonable expenses.

**10. No Third Party Beneficiaries.** Nothing in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever and no other person or entity shall be a third party beneficiary of this Agreement.

**11. Interpretation.** This Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the Privacy Rule and any other applicable law relating to security and privacy of PHI. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.

**12. Regulatory References.** A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement effective as of the Agreement Effective Date.

COVERED ENTITY:

\_\_\_\_\_  
Name

Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

BUSINESS ASSOCIATE:

Andrew Jebasingh\_\_\_\_\_  
Name

E-Signature\_\_\_\_\_

Chief Technology Officer\_\_\_\_\_  
Title

\_\_\_\_\_  
Date