



**HEALTHSNAP INC.  
BUSINESS ASSOCIATE AGREEMENT**

**THIS BUSINESS ASSOCIATE AGREEMENT (“BA Agreement”)** is entered into by and between HealthSnap Inc. (“**HealthSnap**”), with offices at 1951 NW 7<sup>th</sup> Avenue, 6<sup>th</sup> Floor, Miami, FL 33136 and the entity or individual (“**Provider**”) to whom HealthSnap makes available its services pursuant to, and as defined by, the effective underlying Terms of Service agreement entered into between the parties (the “**Services**”). The Services require the exchange of information about patients that is protected by the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) as applicable to Business Associates, as well as any amendments or additions thereto, including amendments made by the HITECH Act and GINA (defined below). HealthSnap is a “Business Associate” and the Provider is a “Covered Entity” as those terms are defined in HIPAA, and the parties desire to establish the responsibilities of both parties regarding HIPAA-covered information and to meet their obligations under HIPAA.

**1. Definitions.** Unless otherwise specified in this BA Agreement, all capitalized terms used in this BA Agreement not otherwise defined have the meaning set forth in HIPAA, as amended from time to time.

**1.1 “Breach Notification Rule”** means the breach notification regulations at 45 CFR Part 160 and 45 CFR Part 164, Subpart D, as they exist now or as they may be amended.

**1.2. “Compliance Date” or “Compliance Dates”** shall mean the date established by HHS or the United States Congress for effective date of applicability and enforceability of HIPAA and the HITECH Act

**1.3 “Data Aggregation”** shall have the meaning assigned to such a term in 45 CFR § 164.501, and includes, but is not limited to, combining PHI created or received to permit data analysis services for Provider.

**1.4. “Designated Record Set”** shall have the meaning assigned to such term in 45 CFR § 164.501, but shall be limited to any item, collection or grouping of PHI maintained, created, or received by or for Provider.

**1.5. “Destruction”** means the use of a technology or methodology by which the media on which the PHI is stored or recorded has been shredded, destroyed, cleared, or purged, as appropriate, such that the PHI cannot be read, retrieved, or otherwise reconstructed.

**1.6. “Electronic PHI” or “EPHI”** shall mean Electronic Protected Health Information, as defined in 45 CFR § 160.103, limited to the information received from, maintained or created or received on behalf of Provider by HealthSnap solely for the purposes of HealthSnap’s provision of the Services.

**1.7. “Encryption”** shall mean a technology or methodology that utilizes an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key, and such confidential process or key that might enable decryption has not been breached, and shall have the meaning given to such term under HIPAA, including 45 CFR § 164.304.

**1.8. “HIPAA”** shall mean Health Insurance Portability and Accountability Act, as modified and amended, and its implementing regulations, and incorporating any amendments thereto made by the HITECH Act, GINA, and any other applicable laws or regulations.

**1.9. “HITECH Act”** shall mean the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, enacted February 17, 2009, and any implementing regulations or guidance thereunder.

**1.10. “Individual”** shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

**1.11. “Protected Health Information” or “PHI”** shall have the meaning set forth in 45 CFR § 164.103, limited, however, to the information that HealthSnap creates, maintains, accesses, or receives on behalf of Provider for purposes of HealthSnap’s provision of the Services.

**1.12. “Privacy Rule”** shall mean the privacy regulations at 45 CFR Part 160 and 45 CFR Part 164, Subparts A and E, as they exist now or as they may be amended.

**1.13. “Secretary”** shall mean the Secretary of the Department of Health and Human Services or her designee.

**1.14. “Security Rule”** shall mean the security regulations at 45 CFR Part 160 and 45 CFR Part 164, Subparts A and C, as they exist now or as they may be amended.

## **2. Use and Disclosure Obligations**

**2.1. Use or Disclosure.** HealthSnap agrees to use and disclose PHI only as permitted by and as necessary to perform the Services or required by this BA Agreement or as Required by Law applicable to HealthSnap;

**2.2. Minimum Necessary.** HealthSnap will take reasonable efforts to limit requests for, use and disclosure of PHI to the minimum necessary to accomplish the intended request, use or disclosure.

**2.3. Safeguards.** HealthSnap agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as permitted or required by this BA Agreement and will comply with the Security Rule with respect to Electronic PHI that HealthSnap creates, receives, maintains, or transmits on behalf of Provider.

**2.4. Reporting.** HealthSnap agrees to promptly notify Provider if HealthSnap has knowledge that PHI has been used or disclosed by HealthSnap in a manner that violates this BA Agreement. To the extent that HealthSnap creates, receives, maintains, or transmits Electronic PHI, HealthSnap agrees to report promptly to Provider any security incident, as determined by HealthSnap, involving PHI of which HealthSnap becomes aware, in accordance with the Breach Notification Rule. HealthSnap shall, following the discovery of a Breach, notify Provider of such Breach without unreasonable delay and in no event later than sixty (60) calendar days after the discovery, including the identification of each Individual whose PHI has been, or is reasonably believed to have been, accessed, acquired or disclosed during the Breach. A Breach shall be treated as discovered as of the first day on which such Breach is known or reasonably should have been known by HealthSnap.

**2.5. Subcontractors and Agents.** HealthSnap agrees to ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of HealthSnap agree to the same restrictions, conditions, and requirements that apply to HealthSnap with respect to such information.

**2.6. Accountability.** HealthSnap agrees to make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

**2.7. Access and Correction.** Within fifteen (15) business days of a request by the Provider, HealthSnap shall provide access to Provider to PHI in a Designated Record Set in order to meet the requirements under 45 CFR § 164.524. If HealthSnap receives a request directly from an Individual, or if requested by the Provider that access be provided to the Individual, HealthSnap shall provide access to the Individual to PHI in a Designated Record Set within thirty (30) days in order to meet the requirements under 45 CFR § 164.524. Within thirty (30) days of a request by the Provider or subject Individual, HealthSnap agrees to make any appropriate amendment (s) to PHI in a Designated Record Set that Provider directs or agrees to pursuant to 45 CFR § 164.526.

**2.8. Accounting.** Within thirty (30) days of a proper request by the Provider, HealthSnap agrees to document and make available to Provider, for a reasonable cost-based fee (under conditions permitted by HIPAA if an Individual requests an accounting more than once during a twelve month period), such disclosures of PHI and information related to such disclosures necessary to respond to such request for an accounting of disclosures of PHI, in accordance with 45 CFR § 164.528. Within sixty (60) days of proper request by subject Individual, HealthSnap agrees to make available to the Individual the information described above. HealthSnap shall retain copies of any accountings for a period of six (6) years from the date the accounting was created.

**2.9. Mitigation.** HealthSnap agrees to mitigate, to the extent practicable, any harmful effect that is known to HealthSnap of a use or disclosure of PHI by HealthSnap in violation of this BA Agreement.

**2.10. Restrictions on Use or Disclosure.** Within fifteen (15) business days of a request of the Provider, HealthSnap agrees to implement restrictions on the use or disclosure of PHI agreed to by the Provider at the request of an Individual in accordance with 45 CFR § 164.522.

**2.11 Remuneration in Exchange for PHI.** Except as permitted under 45 CFR § 164.502(a)(5)(ii), HealthSnap agrees that it shall not directly or indirectly receive remuneration in exchange for PHI from or on behalf of the recipient of such PHI.

- 3. Permitted Uses and Disclosures of PHI.** Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or required by this BA Agreement or required by law, HealthSnap may:

  - 3.1.** make any and all uses and disclosures of PHI as necessary to perform the Services for Provider;
  - 3.2.** use and disclose the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of HealthSnap, provided, however, that the disclosures are required by law or HealthSnap has received from the third party written assurances that the information will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party;
  - 3.3.** perform and provide data aggregation for the health care operations of Provider;
  - 3.4.** de-identify any and all PHI created or received by HealthSnap under this BA Agreement; provided, however, that the de-identification conforms to the requirements of the Privacy Rule. Such resulting de-identified information would not be subject to the terms of this BA Agreement; and
  - 3.5.** may use the PHI to create Limited Data Sets consistent with the requirements of 45 CFR § 164.514(e)(2) of the Privacy Rule (“LDS”). HealthSnap may use or disclose the LDS only for the limited purposes of Research, Public Health, or Health Care Operations, and the LDS will include only the minimum data fields necessary to accomplish these limited purposes.
- 4. Responsibilities of Provider.** Provider agrees:

  - 4.1.** to obtain any consent, authorization or permission that may be required by the Privacy Rule or any other applicable federal, state or local laws and/or regulations prior to furnishing PHI to HealthSnap and will notify HealthSnap of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect HealthSnap’s use or disclosure of PHI.
  - 4.2.** to inform HealthSnap of any PHI that is subject to any arrangements permitted or required of Provider under the Privacy Rule that may materially impact in any manner the use and/or disclosure of PHI by HealthSnap under this BA Agreement, including, but not limited to, restrictions on the use and/or disclosure of PHI as provided for in 45 CFR § 164.522 and agreed to by Provider;
  - 4.3.** to notify HealthSnap of any limitation(s) in the notice of privacy practices of the Provider in accordance with 45 CFR. § 164.520, to the extent that such limitation may affect HealthSnap’s use or disclosure of PHI.
  - 4.4.** to not request that HealthSnap use or disclose PHI in any manner that would exceed that which is minimally necessary under HIPAA or that would not be permitted by a Covered Entity;
  - 4.5.** to have entered into "Business Associate Agreements" with any third parties (e.g., case managers, brokers or third party administrators) to which Provider directs and authorizes HealthSnap to disclose PHI; and
  - 4.6.** prior to using the name or any trademark or tradename of HealthSnap in any written or oral communication to the public, including any notices provided under HIPAA, to first give HealthSnap the opportunity to review and comment on the proposed communication.
- 5. Term and Termination.** This BA Agreement will be effective as of the Effective Date and will continue in effect until terminated in accordance with the provisions herein.

  - 5.1. Termination by Provider.** Upon Provider’s determination of a breach of a material term of this BA Agreement by HealthSnap, Provider will provide HealthSnap written notice of that breach in sufficient detail to enable HealthSnap to understand the specific nature of that breach and afford HealthSnap an opportunity to cure the breach; provided, however, that if HealthSnap fails to cure the breach within a reasonable time specified by Provider, which shall not be less than thirty (30) days, Provider may terminate this BA Agreement. If Provider terminates this BA Agreement, HealthSnap will have no continuing obligation to provide the Services to the Provider.
  - 5.2. Termination by HealthSnap.** Without limiting any other termination rights of the parties, upon HealthSnap’s knowledge of a material breach by the Provider of this BA Agreement, HealthSnap shall notify Provider of such breach and the Provider shall have thirty (30) days to cure such breach. In the event the Provider does not cure the breach, or cure is infeasible, HealthSnap shall have the right to immediately terminate this BA Agreement.

**5.3. Return of PHI.** Except as provided in the section below, upon termination of this BA Agreement for any reason, HealthSnap will return or destroy all PHI received from Provider, or created, maintained or received by HealthSnap on behalf of Provider.

**5.4. Protection of PHI.** In the event that HealthSnap determines that returning or destroying the PHI is infeasible or would not allow HealthSnap to continue its proper management and administration or to carry out its legal responsibilities, HealthSnap may retain such PHI. In that event: (i) HealthSnap will extend the protections of this BA 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 HealthSnap maintains such PHI; and (ii) Provider will comply with its obligations under this BA Agreement with respect to any PHI retained by HealthSnap after the termination or expiration of this BA Agreement. This section will survive any termination or expiration of this BA Agreement.

**6. Indemnification.** Each party (the “**Indemnifying Party**”) shall indemnify and hold the other party and its officers, directors, employees and agents (each an “**Indemnified Party**”) harmless from and against any claim, cause of action, liability, damage, cost or expense (“**Liabilities**”) to which the Indemnified Party becomes subject to as a result of third party claims (including reasonable attorneys’ fees and court or proceeding costs) brought against the Indemnified Party, which arise as a result of: (i) the material breach of this BA Agreement by the Indemnifying Party; or (ii) the gross negligence or willful misconduct of the Indemnifying Party, except to the extent such Liabilities were caused by the Indemnified Party. A party entitled to indemnification under this Section 6 shall give prompt written notification to the Indemnifying Party of the commencement of any action, suit or proceeding relating to a third party claim for which indemnification is sought, subject to applicable confidentiality constraints. The Indemnifying Party shall be entitled to assume control of the defense of such action, suit, proceeding or claim with competent counsel of its choosing. Indemnification shall not be required if any claim is settled without the Indemnifying Party’s consent, which such consent shall not be unreasonably withheld. IN NO EVENT WILL AN INDEMNIFYING PARTY BE LIABLE TO AN INDEMNIFIED PARTY UNDER CONTRACT, TORT, OR ANY OTHER LEGAL THEORY FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR SPECIAL LOSSES OR DAMAGES OF ANY KIND.

**6.1. Limitation of Liability.** In no event shall HealthSnap (or any director, officer, employee, agent, or licensor of HealthSnap) be liable to Provider 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 BA 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 HealthSnap is held liable arising out of or relating to this agreement or the obligations of HealthSnap under this agreement, HealthSnap’s aggregate liability under any legal theory, including tort claims, shall not exceed the fees paid and to be paid by Provider pursuant to underlying Terms of Service agreement within the six (6) month period prior to such event that gave rise to such liability.

**7. Miscellaneous.**

**7.1. Amendment.** HealthSnap may amend this BA Agreement from time to time, including when any changes or amendments to HIPAA require changes to this BA Agreement. Upon any amendments, HealthSnap will provide electronic notice of the amended BA Agreement and post an updated version of the BA Agreement on the HealthSnap website. The BA Agreement shall be automatically amended to incorporate the changes set forth in such amendment.

**7.2. No Third-Party Beneficiaries.** Nothing express or implied in this BA Agreement or any associated agreement between the parties is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations or liabilities whatsoever.

**7.3. Severability and Waiver.** If any provision of this BA Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remaining portions will remain in full force and effect. No failure or delay by either party in exercising any right hereunder will operate as a waiver thereof.

**7.4. Interpretation.** Any ambiguity in this BA Agreement shall be resolved in favor of a meaning that permits the Provider and HealthSnap to comply with HIPAA and be construed in light of any applicable interpretation or guidance on HIPAA, the Privacy Rule, the Security Rule, and/or the Breach Notification Rule issued by HHS or the Office for Civil Rights.

**7.5. Effective Date.** This BA Agreement shall be effective as of the provision of Services by HealthSnap to Provider; provided, however, that any term or condition that relates to obligations of either party only will be effective on the later of the effective date of this BA Agreement or the compliance date applicable to such obligations under HIPAA.

**7.6. Acceptance by Provider.** Execution of this BA Agreement by Provider is not required. Provider shall be deemed to have accepted this BA Agreement in all respects by providing PHI to HealthSnap for performance of the Services by HealthSnap as a Business Associate after the Effective Date.