

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this "Agreement") is by and between Review Wave Subscriber,

\_\_\_\_\_, located at \_\_\_\_\_

\_\_\_\_\_  
("Covered Entity") and **Review Wave, Inc.** ("Business Associate"), a California Corporation, with a business address at 16531 Scientific, Irvine, CA 92618 and is effective as of the date indicated below.

WHEREAS, Covered Entity and Business Associate are parties to one or more Services Agreements (as defined below) pursuant to which Business Associate provides certain services to Covered Entity. In connection with Business Associate's services, Business Associate may create, receive, maintain or transmit Protected Health Information from or on behalf of Covered Entity, which information is subject to protection under the Federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009 (the "HITECH Act") , and related regulations promulgated by the Secretary ("HIPAA Regulations").

WHEREAS, in light of the foregoing and the requirements of the HIPAA, the HITECH Act and HIPAA Regulations, Business Associate and Covered Entity agree to be bound by the following terms and conditions:

### 1. Definitions

#### Catch-all definition:

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 Review Wave.

(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 Subscriber to the Review Wave Service(s).

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

(d) Services Agreement. “Services Agreement” shall mean any present or future agreements, either written or oral, between Covered Entity and Business Associate under which Business Associate provides services to Covered Entity which involve the use or disclosure of Protected Health Information. The Services Agreement is amended by and incorporates the terms of this Agreement. **For purposes of clarity, the Review Wave Inc. Terms of Service Agreement incorporates the terms of this Agreement.**

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

Business Associate agrees to:

(a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;

(b) 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;

(c) 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;

(d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, 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;

(e) To the extent that Business Associate possesses or maintains Protected Health Information in a Designated Record Set, 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;

(f) To the extent that Business Associate possesses or maintains Protected Health Information in a Designated Record Set, 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;

(g) 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;

(h) To the extent, if any, 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

(i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

### **3. Permitted Uses and Disclosures by Business Associate**

(a) Business Associate may use or disclose protected health information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Services Agreement .

(b) Business Associate may use or disclose protected health information as required by law. Specifically, Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1); provided, however, that Business Associate gives Covered Entity prior written notice of its intention to report any such violation of law and the facts or circumstances related thereto, to the extent legally permissible.

(c) Business Associate agrees to make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures.

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

(e) 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.

#### **4. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions**

(a) 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.

#### **5. Permissible Requests by Covered Entity**

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.

#### **6. Term and Termination**

(a) Term. The Term of this Agreement shall be effective as of the signature date on this document and shall only terminate if the Covered Entity terminates for cause as authorized in paragraph (b) of this Section. (b) Termination for Cause. Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement.

(c) Effect of Termination.

•Except as provided in paragraph ii. of this Section 6.c., upon termination of this Agreement, for any reason, Business Associate shall return or 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. Business Associate shall retain no copies of the Protected Health Information.

•In the event that Business Associate determines that returning or destroying the Protected Health Information 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 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.

**7. Indemnification.** To the extent necessary, Covered Entity is solely responsible for obtaining patient consents or authorizations prior to using the Services to store or process PHI and prior to allowing access to PHI by Business Associate. Covered Entity agrees to indemnify and hold Business Associate and its Indemnitees harmless from and against any third party or government claims, including all related damages, costs and expenses (including reasonable attorneys' fees) that arise due to Covered Entity's failure to obtain any such consents or authorizations.

**8. General.**

(a) No Agency Relationship. It is not intended that an agency relationship (as defined under the federal common law of agency) be established hereby, expressly or by implication, between Covered Entity and Business Associate for purposes of liability under HIPAA, HIPAA Regulations, or the HITECH Act. No terms or conditions contained in this Agreement shall be construed to make or render Business Associate an agent of Covered Entity.

(b) Regulatory References. A reference in this Agreement to a section in HIPAA, HIPAA Regulations, or the HITECH Act, means the section as in effect or as amended or modified from time to time, including any corresponding provisions of subsequent superseding laws or regulations.

(c) Amendment. The parties agree to take such action as is necessary to amend the Services Agreement from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA, HIPAA Regulations and the HITECH Act.

(d) Survival. The respective rights and obligations of Business Associate under Section 6 of this Agreement shall survive the termination of this Agreement and the Services Agreement.

(e) Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity and Business Associate to comply with HIPAA, HIPAA Regulations and the HITECH Act.

(f) Relationship of Parties. To the extent that there is more than one Covered Entity covered by this Agreement, (i) that an entity is controlled by, or is under common control with, Review Wave, Inc., directly or indirectly, does not imply that Business Associate has a contract or other commitment from such entity in the absence of a Services Agreement between such entity and the Business Associate; and (ii) shall not imply any joint venture, agency, affiliation or other relationship such that one Covered Entity would be liable for the actions or responsibilities of another Covered Entity under any Services Agreement, other agreement or arrangement, or any other law or regulation.

(g) Notice. Any notices required or permitted hereunder shall be directed to the Covered Entity pursuant to the notice provisions of the Services Agreement.

(h) Miscellaneous. The terms of this Agreement are hereby incorporated into the Services Agreement. Except as otherwise set forth in **Section 8 (e)** of this Agreement, in the event of a conflict between the terms of this Agreement and the terms of the Services Agreement, the terms of this Agreement shall prevail. The terms of the Services Agreement which are not modified by this Agreement shall remain in full force and effect in accordance with the terms thereof. Each party to this Agreement hereby agrees and consents that any legal action or proceeding with respect to this Agreement or any interpretation of this Agreement without limitation shall only be brought in accordance with **Section 31 “Choice of Law & Venue and Disputes”** of the Service Agreement, i.e. the Review Wave Terms of Service Agreement. This Agreement replaces and supersedes any and all prior Business Associate agreements between the parties effective as of the date set forth above. The Services Agreement together with this Agreement

constitutes the entire agreement between the parties with respect to the subject matter contained herein. This Agreement may be executed in several counterparts, each of which shall be deemed a duplicate original so long as each party has executed one counterpart; all of which counterparts collectively shall constitute one instrument representing this Agreement. A counterpart signed and sent by facsimile transmission or by electronic mail in portable document format (.pdf) form or transmitted by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature. ***For purposes of clarity, the parties intend that the Service Order Form signatures and the consent and acknowledgment to the Terms of Service automatically incorporate the terms of this BAA without the need for separate signatures or legal consideration unless modified per Section 10.1 above.*** No amendments or modifications to this Agreement shall be effected unless executed by both parties in writing.

**Review Wave, Inc.**

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Covered Entity**

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_