

NeuroFlow, Inc.
Business Associate Agreement
Effective as of 2/19/2018

NeuroFlow, Inc. and you (individually, a “Party,” and collectively, the “Parties”) enter into this Business Associate Agreement (“BAA”), to define their respective rights and responsibilities with respect to the privacy and security of certain health information in connection with certain federal laws. This BAA supplements, amends, and is made part of the contract between the Parties dated 2/19/2018, as amended from time to time (“Services Contract”).

1. Definitions

For purposes of this BAA, each of the following capitalized terms shall have the meaning set forth in this Section. All other capitalized terms in this BAA shall have the meaning given to them elsewhere in the Services Contract. Except as the context of a provision dictates otherwise, a term used in this BAA that is not defined in this Section or elsewhere in the Services Contract shall have the meaning accorded to it under HIPAA or HITECH, as applicable.

- (a) **Breach.** “Breach” shall have the same meaning as the term “breach” in 45 CFR § 164.402 but limited in application to Unsecured Protected Health Information.
- (b) **Business Associate.** “Business Associate” shall mean NeuroFlow, Inc.
- (c) **CFR.** “CFR” shall mean the Code of Federal Regulations.
- (d) **Covered Entity.** “Covered Entity” shall mean health care provider.
- (e) **Designated Record Set.** “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 CFR § 164.501.
- (f) **HIPAA.** “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder relating to the privacy and security of protected health information, as such statute and regulations may be amended from time to time.
- (g) **HITECH.** “HITECH” shall mean the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009, and the regulations promulgated thereunder relating to the privacy and security of protected health information, as such statute and regulations may be amended from time to time.
- (h) **Individual.** “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).
- (i) **Privacy Rule.** “Privacy Rule” shall mean the standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- (j) **Protected Health Information/Electronic Protected Health Information.** “Protected Health Information” and “Electronic Protected Health Information” shall have the same meaning as the terms “protected health information” and “electronic protected health

information,” respectively, in 45 CFR § 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.

- (k) **Required By Law.** “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR § 164.103.
- (l) **Secretary.** “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- (m) **Security Rule.** "Security Rule" shall mean the standards for Security of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and C.
- (n) **Subcontractor.** “Subcontractor” shall mean a person, not acting as a member of the Business Associate’s workforce, to whom Business Associate delegates a function, activity, or service: (i) that is subject to the requirements of this Agreement; and (ii) for which the person creates, receives, maintains, or transmits protected health information.
- (o) **Unsecured Protected Health Information.** “Unsecured Protected Health Information” shall have the same meaning as the term “unsecured protected health information” in 45 CFR § 164.402, but limited to Protected Health Information.

2. Obligations and Activities of Business Associate

- (a) Business Associate will not use or disclose Protected Health Information other than as permitted or required by this BAA or as Required By Law.
- (b) Business Associate agrees to use appropriate physical, technical, and administrative safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this BAA or Required By Law. These safeguards shall include, but not be limited to, policies and procedures for reasonably and appropriately protecting the confidentiality, integrity and availability of Electronic Protected Health Information. With respect to such information, Business Associate shall meet the requirements of the Security Rule that apply to business associates.
- (c) To the extent practicable, Business Associate agrees to mitigate any harmful effect that is known to Business Associate of its use or disclosure of Protected Health Information in violation of the requirements of this BAA.
- (d) Business Associate agrees to report promptly and in writing to Covered Entity any use or disclosure of Protected Health Information not provided for by this BAA or Required by Law and any security incidents within the meaning of 45 CFR § 164.304 of which it becomes aware. Such reports shall be made promptly as they occur provided that unsuccessful attempts to access Business Associate’s information systems shall be reported only to the extent and at such times as the Parties mutually agree in writing. Business Associate shall report Breaches as described elsewhere in the BAA.
- (e) To the extent that Business Associate is to carry out Covered Entity’s obligations under the Privacy Rule, Business Associate shall perform such responsibilities in accordance with the requirements of the Privacy Rule.
- (f) Business Associate agrees to ensure, through written agreement, that any Subcontractor agrees to substantially the same restrictions and conditions that apply through this BAA to Business Associate with respect to such information. Business Associate may disclose all or

some of the terms of this BAA to any of its Subcontractors to secure its compliance with such restrictions and conditions.

- (g) At Covered Entity's reasonable and timely request, pursuant to a request by an Individual, Business Associate shall provide Covered Entity with Protected Health Information that Business Associate maintains in a Designated Record Set in a time and manner that reasonably allow Covered Entity to comply with the requirements under 45 CFR § 164.524.
- (h) At Covered Entity's reasonable and timely request, pursuant to a request by an Individual, Business Associate shall make Protected Health Information that it maintains in a Designated Record Set available to Covered Entity for amendment in a time and manner that reasonably allow Covered Entity to comply with the requirements under 45 CFR § 164.526, and, upon written notice from Covered Entity, Business Associate shall hold such amendments as Covered Entity incorporates into such information in accordance with the requirements of 45 CFR § 164.526.
- (i) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary in a time and manner designated by the Secretary, for purposes of the Secretary's determining Covered Entity's or Business Associate's compliance with the Privacy Rule.
- (j) Business Associate agrees to document disclosures of Protected Health Information 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 Protected Health Information in accordance with the requirements under 45 CFR § 164.528. Upon Covered Entity's reasonable and timely request, Business Associate shall provide Covered Entity with such accounting in a time and manner that reasonably allow Covered Entity to comply with the requirements under 45 CFR § 164.528. Business Associate shall provide Covered Entity with access reports or other information about disclosures under 45 CFR § 164.528 to the extent and only to the extent such section of the Privacy Rule requires.
- (k) To the extent required under HIPAA, Business Associate shall: (i) restrict its use and disclosure of an individual's Protected Health Information relating to a healthcare item or service where the individual or another person acting on the individual's behalf pays the entire cost of the item or service out of his or her own pocket; (ii) make a reasonable effort to use and disclose only the minimum amount of Protected Health Information necessary to achieve a particular purpose; and (iii) provide Protected Health Information that it maintains electronically in the form requested by Covered Entity pursuant to a request for such information in such form by an Individual or, if not readily producible in such form, in another electronic form agreeable to the Individual and Business Associate, or if such agreement cannot be reached, as a readable hard copy.
- (l) Notwithstanding anything in this Agreement to the contrary, Business Associate shall not receive, directly or indirectly, any remuneration in exchange for Protected Health Information unless permitted under HIPAA and HITECH.
- (m) Upon the discovery of a Breach of Unsecured Protected Health Information, Business Associate shall notify Covered Entity of the Breach in accordance with the requirements under 45 CFR § 164.410.

3. Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in this BAA, Business Associate may use or disclose Protected Health Information to:

- (a) Perform functions, activities, or services for, or on behalf of, the Covered Entity, as specified in the Services Contract/Perform the following functions: except to the extent that such use or disclosure would violate the Privacy Rule if performed by Covered Entity;
- (b) Perform its obligations under this BAA, except to the extent that such use or disclosure would violate the Privacy Rule if performed by Covered Entity;
- (c) Conduct activities for its own proper management and administration or carry out its own legal responsibilities, provided that any disclosure of Protected Health Information for such purpose shall be either: (i) Required By Law; or (ii) made after Business Associate obtains reasonable assurances from the recipient of the Protected Health Information that the Protected Health Information will be held confidentially, that it will be used and disclosed further only for the purpose for which it was disclosed to the recipient, and that the recipient will notify Business Associate of any instances of which it becomes aware that the confidentiality of the Protected Health Information has been breached;
- (d) Provide data aggregation services relating to the health care operations of Covered Entity; and
- (e) Report violations of law in accordance with 45 CFR § 164.502(j)(1).

4. Authorized Individuals

To the extent that Business Associate is obliged to act pursuant to the direction of Covered Entity, it shall have that obligation only when such direction is made by an individual authorized to provide such direction. Such authorization shall be provided in a written notice that Covered Entity provides to Business Associate.

5. Obligations of Covered Entity

(a) *Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions.*

- (1) Covered Entity shall furnish Business Associate with its notice of privacy practices prepared in accordance with 45 CFR § 164.520 and of any modifications thereto. Covered Entity shall arrange for any applicable plan sponsor to provide Business Associate with certification of a plan amendment necessary for Business Associate to provide the plan sponsor with Protected Health Information.
- (2) Covered Entity shall notify Business Associate of: (i) any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information; and (ii) any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

(b) *Permissible Disclosures by Covered Entity.* Covered Entity shall make a reasonable effort not to provide Business Associate more than the minimum Protected Health Information

necessary for Business Associate to perform functions that are permitted or required under this BAA and shall implement and apply other physical, technical and administrative safeguards to transmit Protected Health Information to Business Associate in a manner that meets the requirements of HIPAA and HITECH, as applicable.

- (c) *Permissible Requests by Covered Entity.* Covered Entity shall not request Business Associate to use or disclose more than the minimum Protected Health Information necessary to perform functions that are permitted or required under this BAA or to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA or HITECH if done by Covered Entity.

6. Term and Termination

- (a) *Term.* The term of this BAA shall begin 2/19/2018 and shall terminate as provided elsewhere in this BAA or when all of the Protected Health Information is destroyed or returned to Covered Entity or its designee, or, if it is infeasible to return or destroy Protected Health Information, when protections are extended to such information, in accordance with the termination provisions in this Section.

- (b) *Termination for Cause.*

(1) If Covered Entity knows of a pattern of activity or practice by Business Associate that constitutes a material breach or violation of Business Associate's obligations under the BAA, Covered Entity shall notify Business Associate of the breach and of the period during which Business Associate may take reasonable measures to cure the breach or end the violation. If Business Associate does not cure the breach or end the violation within that period, Covered Entity shall terminate this BAA (and, to the extent applicable, the Services Contract) as soon as feasible.

(2) If Business Associate knows of a pattern of activity or practice by Covered Entity that constitutes a material breach or violation of Covered Entity's obligations under the BAA, Business Associate shall notify Covered Entity of the breach and of the period during which Covered Entity may take reasonable measures to cure the breach or end the violation. If Covered Entity does not cure the breach or end the violation within that period, Business Associate shall terminate this BAA (and, to the extent applicable, the Services Contract) as soon as feasible.

- (c) *Effect of Termination.* Without limiting any responsibility for Business Associate to transfer information upon termination of this BAA, as set forth elsewhere in this BAA (or the Service Contract).

(1) Except as provided in paragraph (2) of this section, upon termination of this BAA, for any reason, Business Associate shall return or, at Covered Entity's direction, destroy all Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying any Protected Health Information is infeasible, Business Associate shall extend the protections of this BAA 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. Miscellaneous

- (a) *Regulatory References.* A reference in this BAA to a section in HIPAA or HITECH, as applicable, means the section as in effect or, as applicable, as it has been redesignated subsequent to execution of this BAA.
- (b) *Incorporation of Required Provisions.* Any provisions of HIPAA, HITECH, or other applicable law that are required to be, but are not otherwise incorporated into this BAA are hereby incorporated by reference herein, effective as of the effective date of this BAA or, if later, as of the date such requirement is required to be incorporated herein.
- (c) *Amendment.* Covered Entity and Business Associate agree to take appropriate action to amend this BAA from time to time as necessary for the Parties to comply with the requirements of HIPAA or HITECH, as each may be amended or construed by courts of applicable jurisdiction or the Secretary from time to time. Each such amendment shall be made by and, unless the Parties mutually agree, effective as of the applicable compliance date for the change in rules or interpretation. The Parties may amend or terminate this BAA in a writing executed by authorized representatives of each Party. Covered Entity shall notify Business Associate in writing of changes in its policies, procedures, or practices with respect to the privacy or security of information that may increase Business Associate's costs in performing obligations under this BAA. If Business Associate determines that such costs will increase materially, it shall notify Covered Entity of the increase in cost. Covered Entity shall reimburse Business Associate for such costs or modify its policies, procedures, or practices to eliminate the increase.
- (d) *Communications.* Written communications from one Party to the other shall be provided as set forth in the Services Contract/by first-class mail, certified/return receipt requested, or by overnight or hand delivery by a reputable courier to the following address, as applicable: except as the receiving Party specifies to the other Party in writing.
- (e) *Relationship.* With respect to all functions that Business Associate performs on behalf of Covered Entity that involve Protected Health Information, the Parties shall have no relationship other than that of independent contractors.
- (f) *Disclosure of Terms of Agreement.* Business Associate may disclose some or all of the terms of this BAA to a Subcontractor or potential Subcontractor.
- (g) *Survival.* The respective rights and obligations of Business Associate under Sections 6(c) of this BAA shall survive the termination of this BAA and the Services Contract.
- (h) *Interpretation.* Any ambiguity in this BAA or the Services Contract shall be resolved to permit Covered Entity and Business Associate to comply with their respective obligations under HIPAA and HITECH.