Business Associate Agreement

Standard form, incorporated into the ClinicTracker Standard Terms and Conditions

JAG Products, LLC · ClinicTracker EHR

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About this copy. This is the standard Business Associate Agreement of JAG Products, LLC (ClinicTracker). It is incorporated by reference into the ClinicTracker Standard Terms and Conditions (Section I.2), published at ClinicTracker.com/terms, and governs JAG Products, LLC's use and disclosure of a customer's protected health information unless the customer and JAG Products, LLC have signed a business associate agreement. When it applies through the Standard Terms and Conditions without being signed, "Covered Entity" means the ClinicTracker customer, and it applies from the start of the customer's Agreement under those Terms. To receive a copy signed by JAG Products, LLC, contact legal@ClinicTracker.com.

This Business Associate Agreement ("Agreement") by and between _____ ("Covered Entity") doing business at _____ and JAG Products, LLC doing business at 1027 Christina Court, Endicott, NY 13760 ("Business Associate"), is entered into as of the date of the last signature below ("Effective Date"), for the purposes of complying with the privacy and security regulations issued by the United States Department of Health and Human Services ("HHS") under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), and their implementing regulations, and, where applicable, the Confidentiality of Substance Use Disorder Patient Records regulations at 42 CFR Part 2 ("Part 2"). Covered Entity and Business Associate are collectively referred to as the "Parties".

Recitals

WHEREAS, Covered Entity is a covered entity as such term is defined under HIPAA and as such is required to comply with the requirements thereof regarding the confidentiality and privacy of Protected Health Information; and

WHEREAS, Business Associate has entered or may enter into an agreement with Covered Entity ("Service Agreement") pursuant to which Business Associate will render services to, for or on behalf of Covered Entity; and

WHEREAS, by providing the services according to the Service Agreement, Business Associate shall become a business associate of Covered Entity as such term is defined at 45 CFR § 160.103; and

WHEREAS, where Covered Entity is or maintains records of a Part 2 program, Business Associate shall also be a qualified service organization of Covered Entity as such term is defined at 42 CFR § 2.11;

NOW THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, the Parties hereto agree as follows:

I. Definitions

For the purposes of this Agreement, the following capitalized terms shall have the meanings ascribed to them below:

- "Breach" shall have the meaning given to such term in 45 CFR § 164.402.
- "Designated Record Set" or "DRS" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR § 164.501. "Information" shall mean any "health information" as defined in 45 CFR § 160.103.
- "Electronic Protected Health Information" shall have the meaning found in the Security Rule, 45 C.F.R. § 160.103.
- "Individual" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR §§ 164.501 and 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- "Part 2 Records" shall mean records subject to Part 2 that Business Associate receives, creates, maintains or transmits on behalf of Covered Entity.
- "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.
- "Protected Health Information" shall have the meaning ascribed to this term in 45 CFR § 160.103, limited to the information that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity. Protected Health Information includes Electronic Protected Health Information.
- "Required by Law" shall have the meaning ascribed to this term in 45 CFR § 164.103.
- "Secretary" shall have the meaning ascribed to this term in 45 CFR § 160.103.
- "Security Incident" shall have the meaning given to such term in 45 CFR § 164.304.
- "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160, and Part 164, Subparts A and C.
- "Subcontractor" shall have the meaning given to such term in 45 CFR § 160.103.
- "Unsecured Protected Health Information" shall have the meaning given to such term in 45 CFR § 164.402.

II. Confidentiality and HIPAA

The Parties shall comply with all federal and state laws governing the confidentiality and privacy of health information including, without limitation, the Privacy Rule, the Security Rule and, where applicable, Part 2.

1. Obligations of Business Associate

1. Use and Disclosure of Protected Health Information. Business Associate agrees that Business Associate and its workforce, and, through the agreements required by Section III, its Subcontractors: (a) shall use or disclose Protected Health Information only in connection with fulfilling its duties and obligations under this Agreement and the Service Agreement; (b) shall not use or disclose Protected Health Information other than as permitted or required by this Agreement or required by law; and (c) shall not use or disclose Protected Health Information in any manner that violates applicable laws or would violate such laws if used or disclosed in such manner by Covered Entity.

Business Associate shall provide adequate training to its employees and subcontractors to ensure compliance with this Section.

Subject to the restrictions set forth in the previous paragraph and throughout this Agreement, Business Associate may use and disclose Protected Health Information as necessary for (a) the proper management and administration of Business Associate; or (b) to carry out the legal responsibilities of Business Associate, provided that any disclosure for these purposes is Required by Law or is made subject to the reasonable assurances described in Section III.

Business Associate may use and disclose Protected Health Information as necessary to perform the services set out in the Service Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity, except for the specific uses and disclosures set out in this Agreement.

To the extent permitted by the Service Agreement, Business Associate may provide data aggregation services relating to the health care operations of Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B). 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).

Business Associate may de-identify Protected Health Information in accordance with 45 CFR § 164.514(a)–(c) only as necessary to perform the services under the Service Agreement or as Covered Entity otherwise authorizes in writing. Information de-identified in accordance with 45 CFR § 164.514 is not Protected Health Information.

Business Associate shall not sell Protected Health Information, or use or disclose Protected Health Information for marketing or fundraising, except as permitted by the Privacy Rule and authorized in writing by Covered Entity.

To the extent Business Associate carries out one or more of Covered Entity's obligations 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 obligations.

Business Associate acknowledges that, as between Business Associate and Covered Entity, all Protected Health Information shall be and remain the sole property of Covered Entity, including any and all forms thereof developed by Business Associate in the course of its fulfillment of its obligations pursuant to the Agreement and Service Agreement. Nothing in this Agreement grants Covered Entity any right, title or interest in Business Associate's software, systems, documentation or other intellectual property.

Business Associate further represents that, to the extent Business Associate requests that Covered Entity disclose Protected Health Information to Business Associate, such request is only for the minimum necessary Protected Health Information for the accomplishment of the Business Associate's purpose. Business Associate shall use, disclose and request only the minimum necessary Protected Health Information in accordance with 45 CFR §§ 164.502(b) and 164.514(d).

Notwithstanding any other provision in this Agreement, if Business Associate obtains Protected Health Information using an authorization signed by the individual who is the subject of such Protected Health Information, the provisions of this Business Associate Agreement do not apply, even if the Protected Health Information is obtained from or on behalf of Covered Entity.

2. Availability of Books and Records. Business Associate shall permit the Secretary to audit Business Associate's internal practices, books and records at reasonable times as they pertain to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity in order to ensure that Covered Entity and Business Associate are in compliance with the requirements of the Privacy Rule and the Security Rule.

3. Access of Individuals to Information. In order to allow Covered Entity to respond to a request by an Individual for an access pursuant to 45 CFR § 164.524, Business Associate, within ten (10) business days of a written request by Covered Entity for access to Protected Health Information about an Individual contained in a DRS, shall make available to Covered Entity such Protected Health Information for so long as such information is maintained in the DRS. Business Associate may satisfy this obligation by making available to Covered Entity the reporting and export functions of Business Associate's services, through which Covered Entity may retrieve such Protected Health Information directly.

In the event any Individual requests access to Protected Health Information directly from Business Associate, Business Associate shall forward such request to Covered Entity within five (5) business days and shall not otherwise respond to the Individual except as Covered Entity directs.

Any denial of access to Protected Health Information determined by Covered Entity pursuant to 45 CFR § 164.524, and conveyed to Business Associate by Covered Entity, shall be the responsibility of Covered Entity, including resolution or reporting of all appeals and/or complaints arising from denials.

Business Associate shall support Covered Entity in a manner that enables Covered Entity to meet its obligations under 45 CFR § 164.524.

4. Amendment of Information. In order to allow Covered Entity to respond to a request by an Individual for an amendment pursuant to 45 CFR § 164.526, Business Associate shall, within ten (10) business days of a written request by Covered Entity to amend Protected Health Information about an Individual contained in a DRS, make available to Covered Entity such Protected Health Information for so long as such information is maintained in the DRS.

In the event any Individual requests amendment of Protected Health Information directly from Business Associate, Business Associate shall forward such request to Covered Entity within five (5) business days and shall not otherwise respond to the Individual except as Covered Entity directs.

Any denial of amendment to Protected Health Information determined by Covered Entity pursuant to 45 CFR § 164.526, and conveyed to Business Associate by Covered Entity, shall be the responsibility of Covered Entity, including resolution or reporting of all appeals and/or complaints arising from denials.

Business Associate shall support Covered Entity in a manner that enables Covered Entity to meet its obligations under 45 CFR § 164.526.

Within ten (10) business days of receipt of a request from Covered Entity to amend an Individual's Protected Health Information in the Designated Record Set, Business Associate shall incorporate, or make available to Covered Entity the means to incorporate, any approved amendments, statements of disagreement, and/or rebuttals into its Designated Record Set as required by 45 CFR § 164.526.

5. Accounting of Disclosures. In order to allow Covered Entity to respond to a request by an Individual for an accounting pursuant to 45 CFR § 164.528, Business Associate shall, within ten (10) business days of a written request by Covered Entity for an accounting of disclosures of Protected Health Information about an Individual, make available to Covered Entity the information required to respond to such request, to the extent Business Associate has made disclosures that must be included in an accounting under 45 CFR § 164.528.

At a minimum, Business Associate shall provide Covered Entity with the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the Protected Health Information, and if known, the address of such entity or person; (iii) a brief description of the Protected Health Information disclosed; and (iv) a brief statement of the purpose of such disclosure.

In the event any Individual requests an accounting of disclosure of Protected Health Information directly from Business Associate, Business Associate shall forward such request to Covered Entity within five (5) business days and shall not otherwise respond to the Individual except as Covered Entity directs.

Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of 45 CFR § 164.528.

Business Associate shall support Covered Entity in a manner that enables Covered Entity to meet its obligations under 45 CFR § 164.528.

6. Survival. The provisions of this Section shall survive the termination of this Agreement.

2. Obligations of Covered Entity

Covered Entity warrants that Covered Entity, its directors, officers, subcontractors, employees, affiliates, agents, and representatives (i) shall comply with the Privacy Rule in its use or disclosure of Protected Health Information; (ii) shall not use or disclose Protected Health Information in any manner that violates applicable federal and state laws; (iii) shall not request Business Associate to use or disclose Protected Health Information in any manner that violates applicable federal and state laws if such use or disclosure were done by Covered Entity; and (iv) may request Business Associate to disclose Protected Health Information directly to another party only for the purposes allowed by the Privacy Rule. The provisions of this Section shall survive the termination of this Agreement.

Covered Entity shall (i) notify Business Associate of any limitation in its notice of privacy practices under 45 CFR § 164.520, any change in or revocation of an Individual's permission to use or disclose Protected Health Information, and any restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to under 45 CFR § 164.522, to the extent such limitation, change or restriction may affect Business Associate's use or disclosure of Protected Health Information; (ii) obtain any consents, authorizations and other permissions required by HIPAA, Part 2 or other applicable law for the Protected Health Information that Covered Entity provides to, or directs to be disclosed by, Business Associate; (iii) identify to Business Associate any Part 2 program whose records are maintained in Business Associate's services; and (iv) be responsible for managing its own users' access to Business Associate's services, including granting and removing access, safeguarding credentials, configuring available security settings and reviewing its users' activity.

III. Disclosure to Third Parties

In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), Business Associate shall ensure that any Subcontractor that creates, receives, maintains or transmits Protected Health Information on behalf of Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to Business Associate under this Agreement with respect to such Protected Health Information, including compliance with the Security Rule and reporting of Breaches and Security Incidents to Business Associate. Business Associate shall require its directors, officers, employees and other workforce members who have access to Protected Health Information to comply with confidentiality obligations consistent with this Agreement.

Before disclosing Protected Health Information to any other third party as permitted by this Agreement, other than as Required by Law, Business Associate shall (i) obtain reasonable assurances from the person to whom the Protected Health Information is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed and (ii) obligate such person to notify Business Associate of any instances of which it is aware in which the confidentiality of the Protected Health Information has been breached.

IV. Safeguards

Business Associate shall employ appropriate administrative, technical and physical safeguards, consistent with the size and complexity of Business Associate's operations, to protect the confidentiality of Protected Health Information and to prevent the use or disclosure of Protected Health Information in any manner inconsistent with the terms of this Agreement.

Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of Covered Entity, and shall comply with the applicable requirements of Subpart C of 45 CFR Part 164 with respect to such Electronic Protected Health Information. Business Associate covenants that such safeguards shall include, without limitation, implementing written policies and procedures in compliance with HIPAA, conducting a security risk assessment, and training Business Associate employees who will have access to Protected Health Information with respect to the policies and procedures required by HIPAA.

V. Reporting of Breaches, Improper Disclosures and Security Incidents

1. Breaches

In the event of a Breach of any Unsecured Protected Health Information that Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds or uses on behalf of Covered Entity, Business Associate shall report such Breach to Covered Entity without unreasonable delay, and in no event more than ten (10) business days after Business Associate determines that such Breach has occurred, and in all cases within the time required by 45 CFR § 164.410. This Section also applies to Breaches of Part 2 Records, as required by 42 CFR § 2.16.

Notice of a Breach shall include, to the extent known at the time of notice and supplemented as information becomes available, the information required by 45 CFR § 164.410(c), including: (i) the identification of each individual whose Protected Health Information has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the Breach, (ii) the date of the Breach, if known, (iii) the scope of the Breach, and (iv) a description of the Business Associate's response to the Breach.

In the event of a Breach, Business Associate shall, in consultation with Covered Entity, mitigate, to the extent practicable, any harmful effect of such Breach that is known to Business Associate.

2. Improper Disclosures

Business Associate shall document disclosures of Protected Health Information to third parties that are required to be included in an accounting of disclosures under 45 CFR § 164.528.

Business Associate shall report to Covered Entity any unauthorized or improper use or disclosure of any Protected Health Information not provided for by this Agreement, including any use or disclosure of Part 2 Records not permitted by Part 2, as soon as practicable, but in no event later than ten (10) business days of the date on which Business Associate becomes aware of such use or disclosure. If such use or disclosure is a Breach, Section V.1 applies. In the event of a Breach, Business Associate shall, in consultation with Covered Entity, mitigate, to the extent practicable, any harmful effect of such Breach that is known to Business Associate.

3. Security Incidents

Business Associate shall report to Covered Entity any Security Incident of which it becomes aware that results in unauthorized access to, or use, disclosure, modification or destruction of, Electronic Protected

Health Information, or in interference with system operations, within ten (10) business days. The Parties agree that this Section constitutes notice by Business Associate of the ongoing existence and occurrence of attempted but unsuccessful Security Incidents, such as pings and other broadcast attacks on firewalls, port scans, unsuccessful log-in attempts and denial-of-service attempts, for which no further notice is required.

VI. Term and Termination

1. General Term and Termination

This Agreement shall become effective on the Effective Date set forth above and shall terminate upon the termination or expiration of the Service Agreement and when all Protected Health Information provided by either party to the other, or created or received by Business Associate on behalf of Covered Entity is, in accordance with Section VII below, destroyed or returned to Covered Entity or, if it is not feasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the terms of this Agreement.

2. Material breach

Where either Party has knowledge of a pattern of activity or practice of the other Party that constitutes a material breach of this Agreement, and cure is possible, the non-breaching Party shall provide written notice and an opportunity to cure. Where said breach is not cured within thirty (30) days of the breaching Party's receipt of such notice, the non-breaching Party may terminate this Agreement and the portion of the Service Agreement that is affected by the breach.

In the event that either Party has knowledge of a material breach of this Agreement by the other Party, and cure is not possible, the non-breaching Party may terminate the portion of the Service Agreement that is affected by the breach.

VII. Return or Destruction of Protected Health Information upon Termination

Upon termination of the Service Agreement for any reason, Covered Entity shall elect in writing one or more of the following: (a) read-only access to Business Associate's services for the period agreed in writing; (b) an export of Covered Entity's Protected Health Information in a format agreed in writing, delivered by secure file transfer or on an encrypted drive sent by tracked delivery, at the fees, if any, set out in the Service Agreement; or (c) no return of Protected Health Information. If Covered Entity does not make an election within thirty (30) days after Business Associate's written request, Covered Entity shall be deemed to have elected option (c). Business Associate shall keep the Protected Health Information secure for sixty (60) days after the read-only period ends, receipt of the export is confirmed, or option (c) is elected, as applicable, and shall then:

- if feasible, destroy all Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity that Business Associate or any of its directors, officers, subcontractors, employees, affiliates, agents, and representatives still maintain in any form, provided that copies in backup and disaster recovery storage shall be destroyed as they expire under Business Associate's backup retention schedule, not later than six (6) months after destruction of the production copies, and shall not be restored except for disaster recovery; or
- if Business Associate determines that return or destruction of any Protected Health Information is not feasible and so notifies Covered Entity, extend the protections of this Agreement to such

information and limit further uses and disclosures to those purposes that make the return or destruction of the Protected Health Information infeasible, in which case Business Associate's obligations under this Section shall survive the termination of this Agreement.

VIII. Amendment

If any of the regulations promulgated under HIPAA or Part 2 are amended or interpreted in a manner that renders this Agreement inconsistent therewith, the Parties shall negotiate in good faith to amend this Agreement to the extent necessary to comply with such amendments or interpretations. If the Parties cannot agree on an amendment within sixty (60) days, either Party may terminate the affected portion of the Service Agreement on written notice. Business Associate agrees that it will fully comply with all such regulations promulgated under HIPAA as they apply to business associates. Otherwise, this Agreement may be amended only by a writing signed by both Parties.

IX. Conflicting Terms

In the event any terms of this Agreement conflict with any terms of the Service Agreement, the terms of this Agreement shall govern and control with respect to Protected Health Information.

X. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

XI. Notices

All notices, requests, approvals, demands and other communications required or permitted to be given under this Agreement shall be in writing and delivered either personally, or by certified mail with postage prepaid and return receipt requested, or by overnight courier, or by email with confirmation of receipt, to the party to be notified. Notices under Section V shall be given by email and telephone to the privacy or security contact designated below. All communications will be deemed given when received. The addresses of the parties shall be as follows; or as otherwise designated by any party through notice to the other party:

- **If To Covered Entity:** _____
- **Covered Entity privacy or security contact (name, email and telephone):** _____
- **If To Business Associate:** JAG Products, LLC: 1027 Christina Court, Endicott, NY 13760
- **Business Associate privacy or security contact:** Joshua Gordon, jgordon@ClinicTracker.com, (315) 633-4240 x106

XII. 42 CFR Part 2 Records

If Covered Entity is, or maintains records of, a Part 2 program, this Agreement also constitutes a qualified service organization agreement under 42 CFR § 2.11, and Business Associate is a qualified service organization with respect to Part 2 Records. Business Associate acknowledges that, in receiving, storing, processing or otherwise dealing with Part 2 Records, it is fully bound by Part 2, and agrees that it shall (a) use and disclose Part 2 Records only as permitted by Part 2 and this Agreement, and not

redisclose Part 2 Records except as Part 2 permits; (b) if necessary, resist in judicial proceedings any efforts to obtain access to Part 2 Records except as permitted by Part 2; (c) not use or disclose Part 2 Records in any civil, criminal, administrative or legislative proceeding against the patient who is the subject of the records, except as permitted by Part 2; and (d) report any use or disclosure of Part 2 Records not permitted by Part 2 to Covered Entity under Section V.

XIII. Miscellaneous

- **Regulatory References.** A reference in this Agreement to a section in HIPAA or Part 2 means the section as in effect or as amended.
- **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit the Parties to comply with HIPAA and Part 2.
- **No Third-Party Beneficiaries.** Except as expressly provided for in the Privacy Rule, there are no third-party beneficiaries to this Agreement. Business Associate's obligations under this Agreement are owed to the Covered Entity only.
- **Limitation of Liability.** Each Party's liability under this Agreement is subject to the limitations and exclusions of liability set out in the Service Agreement, except to the extent prohibited by law.
- **Independent Contractors.** The Parties are independent contractors, and nothing in this Agreement makes Business Associate an agent of Covered Entity.
- **Survival.** Sections II.1.6, II.2, VII and XII, and Business Associate's obligations with respect to any Protected Health Information it retains, survive termination of this Agreement.
- **Counterparts.** This Agreement may be executed in counterparts and by electronic signature, each of which shall be deemed an original.

IN WITNESS WHEREOF, each of the undersigned has duly executed this Agreement on behalf of the party and on the date set forth below.

JAG Products, LLC	
Business Associate	Covered Entity (legal name)
Signature	Signature
Printed name and title	Printed name and title
Date	Date