



Business Associate Agreement

IMPORTANT –
PLEASE READ EVERYTHING BELOW CAREFULLY BEFORE ACCEPTING.

This Business Associate Agreement is entered into and made a part of all agreements, existing now or in the future (collectively the “Agreement”) by and between COVERED ENTITY identified below, including its affiliates (collectively, “Covered Entity”), and Fresh Clinics Management, LLC, a Delaware limited liability company, and its affiliates, as applicable, (collectively, “Business Associate”), as of the date fully executed below (“Effective Date”).

Contact Us

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Recitals

A. Covered Entity and Business Associate have entered into a services agreement (“**Service Agreement**”) whereby Protected Health Information may be created, received, maintained, or transmitted by Business Associate on Covered Entity’s behalf. The parties desire to comply with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“**HIPAA**”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “**HITECH Act**”), and other state and federal laws and regulations, as applicable, including the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164 (together, the “**HIPAA Rules**”).

B. The HIPAA Rules require a Covered Entity to enter into a Business Associate Agreement with a Business Associate prior to the Disclosure of Protected Health Information, as set forth in, but not limited to, 45 C.F.R. §§164.314(a), 164.502(e) and 164.504(e).

C. In consideration of participation in the Service Agreement, the parties agree as follows:

1. DEFINITIONS

1.1. 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, Electronic Protected Health Information, 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.

1.2. “**Business Associate**” shall generally have the same meaning as the term “business associate” at 45 C.F.R. §160.103, and in reference to the party to this Agreement or its applicable affiliate(s), shall have the meaning set forth in the Preamble, above.

1.3. “**Covered Entity**” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. §160.103, and in reference to the party to this Agreement or its applicable affiliate(s), shall have the meaning set forth in the Preamble, above.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

2.1. Use and Disclosure. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required by Law.

2.2. Safeguards. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by this Agreement.

2.3. Reporting. Business Associate agrees to promptly report to Covered Entity any Use or Disclosure of Protected Health Information not provided for by this Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 C.F.R. §164.410, and any Security Incident affecting PHI of the Covered Entity of which it becomes aware.

2.4. Agents and Subcontractors. In accordance with 45 C.F.R. §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any agent or Subcontractor that receives, creates, maintains, or transmits Protected Health Information on behalf of the Business Associate agrees to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.

2.5. Access by Individuals. Business Associate agrees to make available Protected Health Information in a Designated Record Set to the Covered Entity or, if so directed by the Covered Entity, to the Individual or Individual’s designee as necessary to satisfy Covered Entity’s obligations under 45 C.F.R. §164.524.

2.6. Amendment. 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 C.F.R. §164.526, or take other measures as necessary to satisfy Covered Entity’s obligations under 45 C.F.R. §164.526.

2.7. Accounting. Business Associate agrees to maintain and make available to the Covered Entity, or if so directed by the Covered Entity, to the Individual or the Individual's designee, the information necessary for Covered Entity to satisfy its obligations under 45 C.F.R. §164.528.

2.8. Delegated Duties. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

2.9. Governmental Access to Records. Business Associate agrees to make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

2.10. Mitigation. The Business Associate agrees to timely act to mitigate, to the extent practicable, any harmful effects that are known to Business Associate of a Use or Disclosure of PHI held by Business Associate in violation of the requirements of this Agreement.

2.11. Security Training. Business Associate shall ensure its staff undergoes privacy security training to the extent HIPAA or state law requires.

2.12. Encryption. Business Associate shall utilize data encryption to the extent HIPAA or state law requires.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

3.1. Business Associate shall only use or disclose Protected Health Information as necessary to perform the services set forth in the Service Agreement.

3.2. Business Associate may use Protected Health Information to de-identify the information, and Covered Entity hereby requests and authorizes Business Associate to do the same consistent with the requirements of 45 C.F.R. § 164.514 to assist Covered Entity with quality assurance and other activities to improve Covered Entity's health care operations. Once de-identified for the foregoing requested and authorized purpose, the information is no longer Protected Health Information and Covered Entity acknowledges that Business Associate may use for any purpose.

3.3. Business Associate may use or disclose Protected Health Information as Required by Law.

3.4. Business Associate shall use only the Minimum Necessary amount of Protected Health Information to perform the specified functions, activities, or services set forth in the Service Agreement, consistent with Covered Entity's Minimum Necessary policies and procedures.

3.5. Business Associate shall not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific Uses and Disclosures set forth below:

3.5(a) Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

3.5(b) 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.

3.6. Business Associate may use Protected Health Information to provide Data Aggregation services, and Covered Entity hereby requests and authorizes Business Associate to do the same to assist Covered Entity with quality assurance and other activities to improve Covered Entity's health care operations. In order to view the summary reports and analysis on the data aggregated by Business Associate and prepared by Business Associate

from other covered entities Business Associate serves to improve said operations, Covered Entity requests and authorizes Business Associate to add its Protected Health Information to this aggregated data set. Covered Entity acknowledges and understands that raw data will not be shared between different covered entities and that the summary reports and analysis on the raw data is not identifiable of any individual as it is merely reflective of trends and averages of pooled populations.

3.7. Business Associate shall not use or disclose Protected Health Information for fundraising or marketing purposes, except with the prior written authorization of the Covered Entity and consistent with the requirements of 45 C.F.R. §164.514(f) and §164.508(a)(3).

3.8. Business Associate shall not disclose Protected Health Information to a health plan for payment or Health Care Operations purposes if the Business Associate has received written notice from the Individual or the Covered Entity that the Individual has made this special restriction and has paid out of pocket in full for the health care item or service to which the Protected Health Information solely relates, as required by 45 C.F.R. §164.522.

3.9. Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Health Information, except with the prior written authorization of the Covered Entity.

4. OBLIGATIONS OF COVERED ENTITY

4.1. Covered Entity shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 C.F.R. §164.520, to the extent that such limitation may affect Business Associate's use or Disclosure of Protected Health Information. Covered Entity shall include in its Notice of Privacy Practices that it has requested and authorized Business Associate to de-identify Protected Health Information and perform Data Aggregation services to assist Covered Entity with quality assurance and other activities to improve Covered Entity's health care operations.

4.2. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an Individual to use or disclose his or her Protected Health Information, to the extent that such changes may affect Business Associate's Use or Disclosure of Protected Health Information.

4.3. 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 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of Protected Health Information.

4.4. 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 C.F.R. Part 164 if done by Covered Entity, except as permitted in [Section 3.5](#).

5. TERM AND TERMINATION

5.1. Term. The Term of this Agreement shall be effective as of the Effective Date and shall terminate upon the termination of the Service Agreement or on the date Covered Entity terminates this Agreement for cause as authorized in [Section 5.2](#), whichever is sooner.

5.2. 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 and Business Associate has not cured the breach or ended the violation within thirty (30) days of Covered Entity providing notice to Business Associate.

5.3. Obligations of Business Associate upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

5.3(a) Retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities, including but not limited to its Data Aggregation services to several covered entities referenced in Section 3.6;

5.3(b) Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining Protected

Health Information, including derivatives thereof, that the Business Associate or its agents or Subcontractors still maintains in any form, with the exception of de-identified Protected Health Information referenced in Section 3.2;

5.3(c) Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic Protected Health Information to prevent use or Disclosure of the Protected Health Information, other than as provided for in this Section 5.3, for as long as Business Associate retains the Protected Health Information;

5.3(d) Not use or disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at Section 3.5(a) and (b) which applied prior to termination; and

5.3(e) Return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities as discussed above.

5.4. Survival. The obligations of Business Associate under Section 5.3 shall survive the termination of this Agreement.

6. MISCELLANEOUS

6.1. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

6.2. Amendment to Comply with Law. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law, rules, or regulations that might modify the terms and conditions herein.

6.3. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules. In the event any provision of this Agreement conflicts with the provisions of the Service Agreement, the provisions in this Agreement shall be deemed to control and such conflicting provision or part thereof shall be deemed removed and replaced with the governing provision herein to the extent necessary to reconcile the conflict.

6.4. Notices. All notices required or permitted under this Business Associate Agreement shall be in writing and sent to the other party as directed below or as otherwise directed by either party. All such notices shall be deemed validly given upon receipt of such notice by certified mail, return receipt requested or personal or courier delivery and sent to the following address:

If to Business Associate:

Fresh Clinics Management, LLC
2800 Post Oak Boulevard, Suite 4100
Houston, TX 77056
Attn: Dr. John Delaney

With a copy to:

Fresh Clinics Management, LLC
2800 Post Oak Boulevard, Suite 4100
Houston, TX 77056
Attn: General Counsel

If to Covered Entity:

To the address of the Covered Entity as listed on its most recent informational filing with the Secretary of State or other applicable governmental office for its state of formation or registration

under its legal business name set forth below, or if none, the address provided by the Covered Entity to Business Associate in connection with the applicable Services Agreement.

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

COVERED ENTITY

BUSINESS ASSOCIATE

Fresh Clinics Management, LLC

CEO or its Authorized Official, as applicable
(if sole proprietorship, please specify)

CEO or its Authorized Official

Date:

Date: