

## Medical Privacy

Version 2023.6.22

# BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is entered into by and between Lux Scientiae and HIPAA Customer and is an addendum to the Underlying Services Agreement (defined below).

## 1. DEFINITIONS; APPLICABILITY

Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Privacy Rule.

Specific definitions:

- a. Underlying Services Agreement. “Underlying Services Agreement” shall mean the Description of Services Ordered, the Lux Scientiae Master Services Agreement (<https://luxsci.com/msa>), any addendum to the Master Services Agreement, and the Lux Scientiae Acceptable Use Policy (<https://luxsci.com/aup>), collectively.
- b. 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 Lux Scientiae, Incorporated (“Lux Scientiae” or “LuxSci”).
- c. HIPAA Business Associate. “HIPAA Business Associate” shall mean an organization that has a HIPAA Business Associate Agreement with one or more “Covered Entities” or other “HIPAA Business Associates.”
- d. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103.
- e. HIPAA Customer. “HIPAA Customer” shall mean a customer of Lux Scientiae that is either (1) a Covered Entity, or (2) a HIPAA Business Associate, who has

signed a Business Associate Agreement with Lux Scientiae, covering the HIPAA Eligible Services, as applicable.

- f. HIPAA Eligible Services “HIPAA Eligible Services” means only the services listed at <https://luxsci.com/hipaa-eligible-services.html>
- g. CFR. “CFR” shall mean the Code of Federal Regulations.
- h. Disclosure. “Disclosure” of PHI means “the release, transfer, provision of, access to, or divulging in any other manner, of PHI outside the entity holding the information,” as per 45 CFR 160.103.
- i. 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).
- j. 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.
- k. Protected Health Information. “Protected Health Information” (PHI) shall have the same meaning as the term “protected health information” in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of HIPAA Customer.
- l. Required by Law. “Required by Law” shall have the same meaning as the term “required by law” in 45 CFR 164.103.
- m. Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
- n. Security Incident. “Security incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- o. Security Rule. “Security Rule” shall mean those requirements of the 45 CFR Part 164.308, 164.310, 164.312, 164.314, and 164.316.
- p. Use. “Use” of PHI shall mean “the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information,” as per 45 CFR 160.103.
- q. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

There are many kinds of data that HIPAA Customer may store in or transmit through LuxSci's services. LuxSci cannot know specifically which information is PHI and which is not, so in order for LuxSci to ensure the security and privacy of PHI in a straightforward and consistent manner, this Agreement applies only to the HIPAA Eligible Services.

## 2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a. Business Associate agrees to not Use or Disclose PHI other than as permitted or required by this Agreement or as permitted or required by law. In particular, Business Associate has obligations under the HIPAA HITECH Act and agrees to abide by those requirements.
- b. Business Associate agrees to use appropriate safeguards to prevent Use or Disclosure of the PHI other than as provided for by this Agreement. In particular, Business Associate agrees to comply with the Privacy Rule and Security Rule with respect to all data in scope of LuxSci's HIPAA Eligible Services, which is created, received, maintained, or transmitted by Business Associate.
- c. Business Associate provides many mechanisms by which HIPAA Customer can safeguard PHI, which, when properly utilized by HIPAA Customer, will ensure compliance with the provisions of the Privacy Rule and the Security Rule. As the use of Business Associate's services with respect to PHI varies significantly from one HIPAA Customer to another, Business Associate by default does not automatically lock down the security of information storage and transfer to the *maximum* degree possible and does not require that HIPAA Customer purchase or employ all possible services available to it to do so, as that would not be appropriate for many HIPAA Customers. Business Associate will, upon request, advise the HIPAA Customer as to the most appropriate measures it should take with regards to Business Associate's services in order to ensure compliance with the Privacy Rule and the Security Rule, and will assist HIPAA Customer in taking those measures. *However, it is the sole responsibility of HIPAA Customer to choose and utilize those optional security measures that it deems appropriate for its business practices with respect to Business Associate and to utilize those services properly.*
- d. Business Associate agrees to mitigate, to the extent reasonably practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate or its agents or subcontractors in violation of the requirements of this Agreement.
- e. Business Associate agrees to report to HIPAA Customer any Use or Disclosure of PHI not provided for by this Agreement of which it becomes aware, or any Security Incident of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410. Notwithstanding the foregoing, this shall serve as Business Associate's notice to HIPAA Customer for the ongoing occurrence of unsuccessful attempts at unauthorized access, Use,

Disclosure, modification, or destruction of PHI, or unsuccessful attempts at interference with system operations in an information system, such as “pings” on a firewall.

- f. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to substantially similar restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.
- g. All PHI maintained by Business Associate for HIPAA Customer will be available to HIPAA Customer in a time and manner that reasonably allows HIPAA Customer to comply with the requirements under 45 CFR § 164.524. Business Associate shall not be obligated to provide any such information directly to any Individual or person other than HIPAA Customer.
- h. All PHI and other information maintained by Business Associate for HIPAA Customer will be available to HIPAA Customer in a time and manner that reasonably allows you to comply with the requirements under 45 CFR § 164.526.
- i. You acknowledge that Business Associate is not required by this Agreement to make Disclosures of PHI to Individuals or to any person other than HIPAA Customer, and that Business Associate does not, therefore, expect to maintain documentation of such Disclosure as described in 45 CFR § 164.528. In the event that Business Associate does make such Disclosure, it shall document the Disclosure as would be required for you to respond to a request by an Individual for an accounting of Disclosures in accordance with 45 CFR § 164.528, and shall provide such documentation to you promptly on your request. If an Individual makes a request for an accounting directly to Business Associate, Business Associate shall notify HIPAA Customer of the request in a timely manner and shall provide such documentation to HIPAA Customer promptly so that HIPAA Customer may send a response directly to the Individual. This provision covers the actions of Business Associate with respect to explicit Disclosure of PHI; it does not cover Disclosures that may result from inappropriate choices of security settings or inappropriate usage of Business Associate’s services by HIPAA Customer. Business Associate agrees to keep any electronic records of all such Disclosures of PHI for a period of at least 6 years. This includes manual records of explicit/manual Disclosures by staff and automated records such as audit trails and log files.
- j. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the HIPAA Customer directs or agrees to pursuant to 45 CFR § 164.526 at the request of HIPAA Customer or an Individual.

- k. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the Use and Disclosure of PHI received from, or created or received by Business Associate on behalf of, HIPAA Customer available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining HIPAA Customer or Business Associate's compliance with the Privacy or Security Rules.
- l. Business Associate agrees to abide by requirements not to Disclose PHI to insurers or other Health Plans if the patient pays for the service in full and requests confidentiality. It is the obligation of the HIPAA Customer to notify Business Associate of such cases.
- m. If Business Associate explicitly agrees to carry out and carries out a specific obligation under the HIPAA Privacy Rule on the behalf of HIPAA Customer, Business Associate agrees to comply with the requirements of the Privacy Rule with respect to the performance of that obligation.

### **3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

Except as otherwise limited in this Agreement or other portion of the Agreement, Business Associate may Use or Disclose PHI to perform functions, activities, or services for, or on behalf of, HIPAA Customer as specified in the Agreement, provided that such Use or Disclosure would not violate the Privacy Rule if done by you.

Business Associate's services include the transmission of material over email, web sites, and other means. Business Associate provides the means to ensure that PHI is encrypted so that it will not be Disclosed in ways that would violate the Privacy Rule. As per obligation in Section 5.g, it is up to HIPAA Customer to use the appropriate optional services to ensure the appropriate level of security for the PHI that travels through or is stored in Business Associate's services.

### **4. SPECIFIC USE AND DISCLOSURE PROVISIONS**

Except as otherwise limited in this Agreement or other portion of the Agreement, Business Associate may:

- a. Use PHI for the proper management and administration of Business Associate or to carry out its legal responsibilities;
- b. Disclose PHI for the proper management and administration of Business Associate, provided that disclosures are (i) Required By Law, or (ii) Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that it will remain confidential and used or further Disclosed only as Required By Law or for the purpose for which it was Disclosed

to the person, and the person will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; and

- c. Use PHI to report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

## **5. OBLIGATIONS OF HIPAA CUSTOMER**

- a. HIPAA Customer is obliged to utilize Business Associate's services in a way that ensures that HIPAA Customer is in compliance with the Privacy Rule and this Agreement, including without limitation, implementing appropriate privacy and security safeguards in order to protect your PHI.
- b. HIPAA Customer shall notify Business Associate of any limitation(s) in its notice of privacy practices of HIPAA Customer in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.
- c. HIPAA Customer shall notify Business Associate of any changes in, or revocation of, permission by Individual to Use or Disclose PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.
- d. HIPAA Customer shall notify Business Associate of any restriction to the Use or Disclosure of PHI that HIPAA Customer 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 PHI.
- e. HIPAA Customer shall not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under the Privacy Rule if done by HIPAA Customer.
- f. HIPAA Customer agrees not to include PHI in any of Business Associate's services that are not HIPAA Eligible Services.
- g. HIPAA Customer agrees that it is HIPAA Customer's sole responsibility to properly configure the HIPAA Eligible Services to ensure the secure transmission of PHI to and from the HIPAA Eligible Services. HIPAA Customer must encrypt all PHI: (1) transmitted using the HIPAA Eligible Services; and (2) to the extent within HIPAA Customer's control, stored in the HIPAA Eligible Services, in accordance with the Secretary of HHS's Guidance to Render Unsecured Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals, available at <http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/brguidance.html>, as it may be updated from time to time, and as may be made available on any successor or related site designated by HHS.

- h. HIPAA Customer agrees to notify Business Associate of any of its users whose PHI should not be Disclosed to insurers or Health Plans due to the fact that they pay in full for their own insurance and have requested confidentiality.
- i. If HIPAA Customer markets or resells Business Associate's Secure Marketing™ service ("Marketing Service") to any third parties, HIPAA Customer hereby covenants, represents, and warrants that such third parties will only have direct account login access to the Marketing Service if HIPAA Customer provides a separate installed instance of the Marketing Service to every such third party.
- j. HIPAA Customer shall obtain any consent, authorization, or permission that may be required by the Privacy Rule or other applicable laws before disclosing to Business Associate the PHI pertaining to an Individual.

## 6. TERM AND TERMINATION

- a. **Term.** The Term of this Agreement shall be effective as of the date when HIPAA Customer signs this Agreement and it is accepted by Lux Scientiae, and shall terminate when all of the PHI provided by HIPAA Customer to Business Associate, or created or received by Business Associate on behalf of HIPAA Customer, is destroyed or returned to HIPAA Customer, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- b. **Termination for Cause.** Upon HIPAA Customer's knowledge of a material breach by Business Associate, HIPAA Customer shall either:
  - 1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within thirty (30) calendar days;
  - 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
  - 3. If neither termination nor cure is feasible, HIPAA Customer shall report the violation to the Secretary.

In the case of legitimate Termination for Cause, HIPAA Customer may also terminate its accounts with Business Associate without regard to any time remaining on HIPAA Customer's account contracts, though any amounts due to Business Associate at that time will become immediately due. Additionally, Business Associate may immediately terminate this Business Associate Agreement and the Customer's account upon notice to HIPAA Customer if the

HIPAA Customer fails to meet its HIPAA obligations.

c. **Effect of Termination.**

1. Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy, within 90 days of termination, all PHI received from HIPAA Customer, or created or received by Business Associate on behalf of HIPAA Customer. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI after this time.
2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall extend the protections of this 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 Business Associate maintains such PHI.

## 7. MISCELLANEOUS

- a. **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.
- b. **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for HIPAA Customer to comply with the requirements of the Privacy Rule, the Security Rule, the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, and all subsequent laws and regulations bearing on the subject matter of this Agreement.
- c. **Survival.** The respective rights and obligations of Business Associate under Section 6.c of this Agreement shall survive the termination of this Agreement.
- d. **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit HIPAA Customer to comply with the Privacy Rule and Business Associate to comply with the Privacy and Security Rules. With respect to each Parties obligations under 45 CFR Parts 160 and 164, the provisions of this Business Associate Agreement shall prevail over any provisions in the Underlying Services Agreement between the Parties that may conflict or appear inconsistent.

[Signature Page Follows]



## ACCEPTANCE OF BUSINESS ASSOCIATE AGREEMENT

\*\*\*Please sign using our online form at: <http://luxsci.com/baa> to sign. \*\*\*

**YES, I have read and agree** with the Business Associate Agreement.

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

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

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

Order Number: \_\_\_\_\_