

Zoom Video Communications, Inc.
BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT ("**Agreement**" or "**BAA**") is made as of _____ between **Zoom Video Communications Inc.**, located at 55 Almaden Blvd, Suite 600, San Jose, CA 95113, hereinafter referred to as "**Zoom**" or "**Business Associate**", and _____, located at _____, hereinafter referred to as "**Company**" or "**Covered Entity**".

RECITALS:

WHEREAS, the parties desire to comply with relevant Federal and State confidentiality standards, including but not limited to: the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"); 45 CFR part 160 and part 164, subparts A and E (the "**Privacy Rule**"); 45 C.F.R. Part 160 and Subparts A and C of Part 164 (the "**Security Rule**"), and The Health Information Technology for Economic and Clinical Health Act (the "**HITECH Act**").

NOW THEREFORE, the parties to this Agreement hereby agree as follows:

1. **Definitions.** Terms used, but not otherwise defined, in this Agreement shall have the meaning ascribed to them by HIPAA, the Privacy Rule, the Security Rule, and/or the HITECH Act.
 - a. **Breach** shall mean any acquisition, access, use, or disclosure of Unsecured Protected Information that is inconsistent with the terms of this BAA and that compromises the security or privacy of the Unsecured Protected Information. Whether an acquisition, access, use, or disclosure of Unsecured Protected Information compromises its security or privacy shall be determined by reference to the definition of "breach" in 45 C.F.R. § 164.402.
 - b. **Business Associate** refers to Zoom and shall have the meaning specified in 45 CFR § 160.103.
 - c. **Covered Entity** refers to Company and shall have the meaning specified in 45 C.F.R. § 160.103.
 - d. **Electronic PHI** is any PHI that is transmitted by or maintained in electronic media.
 - e. **Part 2 Patient Identifying Information** means the name, address, social security number, fingerprints, photograph, or similar information by which the identity of any individual who has applied for or been given diagnosis, treatment, or referral for treatment for a substance use disorder at a federally assisted program, can be determined with reasonable accuracy either directly or by reference to other information. The term does not include a number assigned to a patient by a part 2 program, for internal use only by the part 2 program, if that number does not consist of or contain numbers (such as a social security, or driver's license number) that could be used to identify a patient with reasonable accuracy from sources external to the federally assisted program.
 - f. **Protected Health Information or PHI** is any information, whether oral or recorded in any form or medium, that Zoom receives from or on behalf of Covered Entity pursuant to this Agreement, that identifies an individual or might reasonably be used to identify an individual and relates to: (i) the individual's past, present, or future physical or mental health; (ii) the provision of health care to the individual; or (iii) the past, present, or future payment for health care to the individual.
 - g. **Protected Information** means Part 2 Patient Identifying information and Protected Health

Information.

- h. **Required by law** shall mean a mandate contained in law that compels a use or disclosure of Protected Information.
 - i. **Secretary** shall mean the Secretary of the Department of Health and Human Services and those employees or agents designated to act on the Secretary's behalf.
 - j. **Security or Security Measures** means the administrative, physical, and technical safeguards and documentation requirements specified in the Security Rule.
 - k. **Service Agreement** shall mean the agreement pursuant to which Zoom is to provide video communication services and other related services to Covered Entity.
 - l. **Unsecured Protected Information** is any Protected Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary.
2. Zoom's Storage and Use of Protected Information.
- a. Covered Entity may not transmit or store Protected Information in Zoom's systems except as described in this paragraph.
 - b. When Zoom provides services subject to a Business Associate Agreement, its services are limited to transmission of communications between persons using those services, and the provision of end-to-end encrypted storage of chat communications on Zoom servers. Covered Entity may elect to store encrypted chat communications sent over Zoom's servers. In such cases, the encryption keys to such communications are retained only by the persons using Zoom's services and Zoom does not have encryption keys for any such end-to-end encrypted communications. For clarity, with respect to accounts provisioned subject to a Business Associate Agreement, Zoom's storage is limited to end-to-end encrypted chat communications.
 - c. Consistent with the foregoing, Zoom's rights and obligations with respect to Protected Information under this Agreement are limited to those rights and obligations applicable solely to Zoom's transmission of Protected Information, as described in this paragraph.
 - d. For the avoidance of doubt, Zoom is not responsible for the use, disclosure, or storage of any Protected Information stored locally on Covered Entity's systems; any use, storage, or disclosure of any Protected Information after the Protected Information has been transmitted using Zoom services, except as described in this paragraph 2; or Protected Information that Covered Entity discloses to Zoom in a manner not covered by paragraph 2(b).
 - e. All Protected Information subject to this Agreement is, shall be, and shall remain the sole property of Covered Entity.
 - f. Business Associate shall act as a Qualified Service Organization within the meaning of 42 C.F.R. Part 2 only to the extent Business Associate receives, stores, processes, or otherwise deals with any records containing Part 2 Patient Identifying Information. Business Associate shall not act as a Qualified Service Organization or be subject to liabilities imposed on any Qualified Service Organization with respect to Business Associate's treatment of other forms of data, including PHI that does not qualify as Part 2 Patient Identifying Information.
3. Obligations and Activities of Business Associate.
- a. Zoom agrees to not use or disclose Protected Information other than as permitted or required by this Agreement, as required or permitted by the Service Agreement, or as required or

permitted by law, provided such use or disclosure would also be permissible by law by Covered Entity.

- b. Zoom agrees to mitigate, to the extent practicable, any harmful effect that is known to Zoom of a use or disclosure of Protected Information by Zoom in violation of the requirements of this Agreement.
- c. Zoom agrees to report to Covered Entity any use or disclosure of the Protected Information not provided for by this Agreement.
- d. Zoom agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Information received from, or received by Zoom on behalf of, Covered Entity agrees to substantially the same restrictions and conditions that apply through this Agreement to Zoom with respect to such information.
- e. Zoom agrees to provide access, at the request of Covered Entity and where reasonably practicable in light of Zoom's minimal retention of Protected Information or otherwise, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual (as defined in 45 C.F.R. § 160.103) in order to meet the requirements under 45 CFR §164.524, provided that nothing in this section shall require Business Associate to retain or obtain access to Protected Health Information not already being retained or accessed by Business Associate pursuant to the terms of this agreement.
- f. Zoom agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, provided that nothing in this section shall require Business Associate to retain or obtain access to Protected Health Information not already being retained or accessed by Business Associate pursuant to the terms of this agreement and that nothing in this section shall require Business Associate to assign a Designated Record set where not reasonably practicable in light of Zoom's minimal retention of Protected Information or otherwise.
- g. Zoom agrees to make internal practices, books, and records relating to the use and disclosure of Protected Information received from, or received by Zoom on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- h. Zoom agrees to document such 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 45 CFR §164.528. For the avoidance of doubt, the transmission of Protected Information between end users of Zoom services shall not qualify as a disclosure of Protected Information by Zoom, and Zoom has no duty to document the transmission of Protected Information between end users.
- i. Zoom agrees to provide to Covered Entity or an Individual, in a time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- j. Zoom will implement administrative, physical, and technical safeguards and their required implementation specifications, consistent with the size and complexity of Zoom's operations, to protect the confidentiality of Protected Information. Zoom will comply, where applicable, with the Security Rule with respect to Electronic PHI.

- k. Zoom shall report to the Covered Entity in writing any access to, or use, or disclosure of Protected Information not permitted by law and this Agreement, and any Breach of unsecured Protected Information of which it becomes aware without reasonable delay and in no case no more than 10 calendar days from discovery. Notice of a Breach shall include, to the extent known: (i) the identification of each individual whose Protected 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, and the date of discovery of the Breach; (iii) the scope of the Breach; and (iv) Zoom's response to the Breach.

4. Permitted Uses and Disclosures by Business Associate.

- a. Zoom shall access, use, and disclose Protected Information only:
 - i. in connection with transmitting communications and temporary storage incident to transmission,
 - ii. except as otherwise limited in this Agreement or by application of 42 C.F.R. Part 2 with respect to Part 2 Patient Identifying Information, for the proper management and administration of Zoom or to carry out the legal responsibilities of Zoom; provided that in doing so, Zoom will only use the minimum necessary Protected Health information necessary for the property management and administration of Zoom's business specific purposes, or
 - iii. to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1) and, where applicable, 42 C.F.R. Part 2.
- b. Zoom will ensure that any agents, including subcontractors, to whom it discloses Protected Information for the purposes of transmission will implement at a minimum the safeguards required of Zoom with respect to Protected Information. Zoom shall implement and apply appropriate sanctions against agents and subcontractors that violate the conditions and restrictions of this Agreement and shall mitigate the effects of any such violation.

5. Obligations of Covered Entity.

- a. Covered Entity shall notify Zoom of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect Zoom's use or disclosure of Protected Information.
- b. Covered Entity is solely responsible for ensuring that it does not transmit or store Protected Information on Zoom's network, except for the purpose of communications transmission or cloud-based encrypted storage of communications set forth in Paragraph 2.
- c. Covered Entity is solely responsible for ensuring the Protected Information it transmits via Zoom may be legally disclosed to the communications recipient(s).
- d. Covered Entity shall notify Zoom of any changes in, or revocation of, permission by an Individual to use or disclose Protected Information, to the extent that such changes may affect Zoom's use or disclosure of Protected Information.
- e. Covered Entity shall notify Zoom of any restriction to the use or disclosure of Protected Information that Covered Entity has agreed to in accordance with 45 CFR §164.522 or 42 C.F.R. Part 2, to the extent that such restriction may affect Zoom's use or disclosure of Protected Information.

6. Term and Termination.

- a. The term of this Agreement shall begin as of the effective date of the Service Agreement and shall terminate when all of the Protected Information provided by Covered Entity to Zoom, or created or received by Zoom on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- b. Upon Covered Entity's knowledge of a material breach by Zoom, Covered Entity shall either:
 - i. Provide an opportunity for Zoom to cure the breach or end the violation and terminate this Agreement and the Service Agreement if Zoom does not cure the breach or end the violation within the time specified by Covered Entity;
 - ii. Immediately terminate this Agreement and the Service Agreement if Zoom has breached a material term of this Agreement and cure is not possible; or
 - iii. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- c. In addition to the grounds for termination specified in this Agreement, the Covered Entity may terminate this Agreement, effective immediately, if Zoom is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations, or other security or privacy laws or if a finding or stipulation that Zoom has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations, or other security or privacy laws is made in any administrative or civil proceeding in which Zoom is a party.
- d. Except as provided in paragraph (e) of this Section, upon any termination or expiration of this Agreement, Zoom shall return or destroy all Protected Information received from Covered Entity, or created or received by Zoom on behalf of Covered Entity. This provision shall apply to Protected Information that is in the possession of subcontractors or agents of Zoom. Zoom shall retain no copies of the Protected Information.
- e. In the event that Zoom determines that returning or destroying the Protected Information is infeasible, Zoom shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon Covered Entity's written agreement that return or destruction of Protected Information is infeasible, Zoom shall extend the protections of this Agreement to such Protected Information and limit further uses and disclosures of such Protected Information to those purposes that make the return or destruction infeasible, for so long as Zoom maintains such Protected Information.

7. Notices.

Any notices to be given under this Agreement to a party shall be made in writing and delivered via (1) mail by registered or certified mail, or (2) electronic mail, or (3) overnight mail or courier service to the primary contact at the address indicated below (or at such other address as a party may specify by notice to the others pursuant hereto).

Notices shall be addressed as follows:

If to Zoom, to:

Zoom Video Communications, Inc.
55 Almaden Blvd
Suite 600
San Jose, CA 95113
Email: privacy@zoom.us with Cc to legal@zoom.us
Attention: Privacy Officer

If to Covered Entity, to:

Company: _____

Address: _____

Email: _____

Attention: _____

9. Miscellaneous.

- a. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- b. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA, the Privacy Rule, the Security Rule, the HITECH Act, and 42 C.F.R. Part 2.
- c. The respective rights and obligations of Zoom under Section 6(d) and (e) of this Agreement shall survive the termination of this Agreement.
- d. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule, the HITECH Act, and 42 C.F.R. Part 2.
- e. Zoom will notify the Covered Entity within 10 days of learning Zoom has become the subject of an audit, compliance review, or complaint investigation by either the Office of the Inspector General of DHHS or the Office of Civil Rights of DHHS.
- f. If Zoom knows of a pattern of activity or practice of the Covered Entity that constitutes a material breach or violation of the Covered Entity's obligations under this Agreement, Zoom must take reasonable steps to notify Covered Entity to cure the breach or end the violation. If the steps are unsuccessful, Zoom may terminate this Agreement or, if termination is not feasible, report the problem to the Secretary of DHHS. Zoom shall provide written notice to the Covered Entity of any activity or practice that is believed to constitute a material breach or violation of the Agreement within 5 days of discovery and shall meet with the Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

[signature page follows]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

COVERED ENTITY:

Signature: _____

Name: _____

Title: _____

Date: _____

BUSINESS ASSOCIATE:
Zoom Video Communications, Inc.

DocuSigned by:
Kari Zeni
Signature: _____
12D13650614A4A7...

Name: Kari Zeni
Name: _____

Title: DPO
Title: _____

Date: Dec 17, 2019
Date: _____