

## BUSINESS ASSOCIATE AGREEMENT

(Last reviewed on June 14, 2018)

This Business Associate Agreement (“**Agreement**”) is entered into as of the Effective Date (as defined herein) between Covered Entity (as defined herein) and TigerConnect, Inc. (“**Business Associate**”), a Delaware corporation with its principal offices located at 2110 Broadway, Santa Monica, California 90404.

### Recitals

Pursuant to the parties’ separate services agreement (“**Services Agreement**”), Business Associate has agreed to perform certain services for or on behalf of Covered Entity that may involve the creation, maintenance, use, transmission or disclosure of protected health information within the meaning of the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”), and its implementing regulations, 45 CFR Parts 160 and 164 (“**HIPAA Rules**”). This Agreement supplements the Services Agreement and is intended to and shall be interpreted to satisfy the requirements for business associate agreements as set forth in the HIPAA Rules as they shall be amended. Business Associate understands and acknowledges that Business Associate is subject to the HIPAA Rules, and that the violation of the HIPAA Rules carry significant penalties as described in 45 CFR §160.404.

### Definitions

**1. General Definitions.** 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, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.*

**2. Specific Definitions.**

**2.1 Business Associate** has the same meaning as the term “business associate” at 45 CFR §160.103, and in reference to the party to this Agreement shall mean Business Associate.

**2.2 Covered Entity** has the same meaning as the term “covered entity” at 45 CFR §160.103, and in reference to the party to this Agreement shall mean Covered Entity.

**2.3 PHI** has the same meaning as the term “protected health information” at 45 CFR §160.103, and includes any individually identifiable information that is created, received, maintained or transmitted by Business Associate on behalf of Covered Entity that relates to an individual’s past, present or future physical or mental health, health care or payment for health care, whether in oral, hard copy, electronic or any other form or medium.

**2.4** Terms used but not otherwise defined in this Agreement shall be defined as set forth in 45 C.F.R. Part 160 and Part 164, Subparts A, C, D, and E, as they shall be amended.

### Agreement

**3. Relationship of the Parties.** Business Associate is and at all times during this Agreement shall be acting as an independent contractor to Covered Entity, and not as Covered Entity’s agent. Covered Entity shall not have authority to control the method or manner in which Business Associate performs its services on behalf of Covered Entity, provided that Business Associate complies with the terms of this Agreement and the HIPAA Rules. Business Associate shall not have authority to bind Covered Entity to any liability unless expressly authorized by Covered Entity in writing, and Covered Entity shall not be liable for the acts or omissions of Business Associate. Business Associate shall not represent itself as the agent of Covered Entity. Nothing in this Agreement shall be deemed to establish an agency, partnership, joint venture or other relationship except that of independently contracting entities.

**4. Business Associate Responsibilities.** Business Associate agrees to:

**4.1** Fully comply with the HIPAA Rules as they apply to Business Associate.

**4.2** Not use or disclose PHI except as permitted by this Agreement or as otherwise required by law.

**4.3** Use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this Agreement. Business Associate shall comply with the requirements in 45 CFR Part 164, Subpart C applicable to business associates, including using administrative, physical and technical safeguards to protect electronic PHI. In addition, if Business Associate performs activities related to Covered Entity's covered accounts as defined in 16 C.F.R. §681.1, Business Associate will implement and comply with reasonable policies to identify, prevent and mitigate any instance of identity theft relating to the covered accounts.

**4.4** Immediately report to Covered Entity's Privacy Officer any use or disclosure of PHI not permitted by this Agreement or the HIPAA Rules of which Business Associate becomes aware, including reporting breaches of unsecured PHI as required by 45 CFR §164.410, and reporting security incidents as required by 45 CFR §164.314(e)(2)(i)(C). Additionally, if Business Associate performs activities related to Covered Entity's covered accounts as defined in 16 C.F.R. §681.1, Business Associate will report to Covered Entity any actual or suspected instance of identity theft involving a Covered Entity covered account. Business Associate shall report the information necessary and in such a manner as to enable Covered Entity to investigate the incident and comply with Covered Entity's obligations under applicable law.

**4.5** Mitigate, to the extent practicable, any harmful effect caused by a use or disclosure of PHI by Business Associate in violation of this Agreement.

**4.6** Fully cooperate with Covered Entity's efforts to promptly investigate, mitigate and notify third parties of breaches of unsecured PHI or security incidents as required by the HIPAA Rules.

**4.6** Ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions and requirements set forth in this Agreement and the HIPAA Rules applicable to such subcontractors. Business Associate may fulfill this requirement by executing a written agreement with the subcontractor incorporating the terms of this Agreement and otherwise complying with the requirements in 45 CFR §§164.502(e)(1)(ii), 164.502(e)(2) and 164.308(b)(2),(3).

**4.7** To the extent Business Associate maintains a designated record set on behalf of Covered Entity, Business Associate shall make available PHI in a designated record set to Covered Entity, within 10 days of request, to satisfy Covered Entity's obligations under 45 CFR §164.524. Should Business Associate or its subcontractors receive a direct request from an individual, Business Associate will promptly forward the individual's request to Covered Entity.

**4.8** To the extent Business Associate maintains a designated record set on behalf of Covered Entity, Business Associate shall make any amendment(s) to PHI in a designated record set within 10 days of request, as directed or agreed to by Covered Entity pursuant to 45 CFR §164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR §164.526. Should Business Associate or its subcontractors receive a direct request from an individual, Business Associate will promptly forward the individual's request to Covered Entity.

**4.9** Maintain and make available the information required to provide an accounting of disclosures to Covered Entity, within 10 days of request, to satisfy Covered Entity's obligations under 45 CFR §164.528. Should Business Associate or its subcontractors receive a direct request from an individual, Business Associate will promptly forward the individual's request to Covered Entity.

**4.10** To the extent Business Associate is to carry out Covered Entity's obligations under 45 CFR Part 164, Subpart E, comply with the requirements of Subpart E that apply to Covered Entity in the performing such obligations.

**4.11** Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

## **5. Uses and Disclosures by Business Associate.**

**5.1 Permissible Uses and Disclosures.** Business Associate may use or disclose PHI only as follows:

**5.1.1** As necessary to perform the services set forth in the Services Agreement.

**5.1.2** As authorized, to de-identify PHI in accordance with 45 CFR §164.514(a)-(c).

**5.1.3** As required by law.

**5.1.4** Business Associate may not use or disclose PHI in a manner that would violate 45 CFR Part 164, Subpart E, if done by Covered Entity.

**5.1.5** Business Associate agrees to use or disclose the minimum amount of PHI necessary for a permitted purpose pursuant to this Section 5, Covered Entity's policies and procedures, and 45 CFR §164.502(b).

## **5.2 Additional Use and Disclosure Provisions**

**5.2.1** Except as limited in the Services Agreement, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities.

**5.2.2** Except as limited in the Services Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out its legal responsibilities, provided that any disclosures for these purposes (i) are required by law, or (ii)(a) Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that the PHI will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed, and (ii)(b) the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

**5.2.3** Except as limited in the Services Agreement, Business Associate may use PHI to provide data aggregation services relating to the health care operations of Covered Entity as defined in 45 CFR §164.501.

**6. Term and Termination.** Unless otherwise agreed to in writing by the parties, this Agreement shall be effective as of the Effective Date and shall continue until terminated as provided below.

**6.1 Termination.** This Agreement shall terminate on the date the Services Agreement is terminated for any reason. In addition, this Agreement may be terminated earlier as follows:

**6.1.1** Covered Entity may terminate this Agreement upon thirty (30) days prior notice if Covered Entity determines that Business Associate or any subcontractor has violated the HIPAA Rules, a material term of this Agreement, or otherwise engaged in conduct that may compromise PHI. Subject to Section 6.1.2, Business Associate shall have the opportunity to cure the breach or violation within the 30-day notice period. If Business Associate fails to cure the breach or violation within the 30-day notice period, Covered Entity may terminate this Agreement.

**6.1.2** Notwithstanding Section 6.1.1, Covered Entity may terminate this Agreement immediately if Business Associate or any subcontractor engages in any conduct that Covered Entity reasonably believes may result in adverse action against Covered Entity by any governmental agency or third party.

**6.2 Termination of Services Agreement.** Notwithstanding anything in the Services Agreement to the contrary, Covered Entity shall have the right to terminate the Services Agreement immediately if Business Associate's creation, maintenance, use, transmission or disclosure of PHI is a material purpose of the Services Agreement and this Agreement is terminated for any reason.

**6.3 Obligations of Business Associate Upon Termination.** Upon termination of this Agreement for any reason, Business Associate shall, with respect to PHI received from Covered Entity, or created, maintained, used or received by Business Associate on behalf of Covered Entity:

**6.3.1** If feasible, return all PHI to Covered Entity at Covered Entity's sole expense, or, if Covered Entity agrees, destroy such PHI.

**6.3.2** If the return or destruction of PHI is not feasible, continue to extend the protections of this Agreement and the HIPAA Rules to such PHI and not use or further disclose the PHI in a manner that is not permitted by this Agreement or the HIPAA Rules.

**6.4 Survival.** Business Associate's obligations under this Section 6 shall survive termination of this Agreement.

**7. Regulatory References.** A reference in this Agreement to a section in the HITECH Act or HIPAA Rules means the section as in effect or as amended.

**8. Amendment.** The parties agree to take such action as is necessary to amend this Agreement from time to time to comply with the requirements of the HITECH Act, HIPAA Rules, the FTC Identity Theft "Red Flag" Rules and any other applicable laws and regulations.

**9. Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with the HITECH Act, HIPAA Rules and other applicable law.

**10. Governing Law.** This Agreement shall be construed to comply with the requirements of the HIPAA Rules, and any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules. All other aspects of this Agreement shall be governed under the laws of the State of California and venue for any actions relating to this Agreement shall be in Los Angeles County, California.

**11. Assignment/Subcontracting.** This Agreement shall inure to the benefit of and be binding upon the parties and their respective legal representatives, successors and assigns. Business Associate may assign or subcontract rights or obligations under this Agreement to subcontractors or third parties without the express written consent of Covered Entity provided that Business Associate complies with Section 4.6, above. Covered Entity may assign its rights and obligations under this Agreement to any successor or affiliated entity.

**12. Cooperation.** The parties agree to cooperate with each other to comply with the requirements of the HITECH Act, the HIPAA Rules, the FTC Identity Theft Rules and other applicable laws; to assist each other in responding to and mitigating the effects of any breach of PHI in violation of the HIPAA Rules or this Agreement; and to assist the other party in responding to any investigation, complaint, or action by any government agency or third party relating to the performance of this Agreement. In addition, Business Associate shall make its officers, members, employees and agents available without charge for interview or testimony.

**13. Relation to Services Agreement.** This Agreement supplements the Services Agreement. The terms and conditions of the Services Agreement shall continue to apply to the extent not inconsistent with this Agreement. If there is a conflict between this Agreement and the Services Agreement, this Agreement shall control.

**14. No Third Party Beneficiaries.** Nothing in this Agreement is intended to nor shall it confer any rights on any other persons except Covered Entity and Business Associate and their respective successors and assigns.

**15. Entire Agreement.** This Agreement contains the entire agreement between the parties as it relates to the use or disclosure of PHI, and supersedes all prior discussions, negotiations and services relating to the same to the extent such other prior communications are inconsistent with this Agreement.

**16. Encryption.** Business Associate and its subcontractors, if applicable, shall employ adequate data and device (desktop, laptop, USB thumb drive, CD/DVD, etc.) encryption to render Covered Entity's PHI data unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology tested by the National Institute of Standards and Technology and judged to meet the standard. Such protection shall also extend to any databases or collections of PHI containing information derived from the PHI as well as to PHI backups and archives.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement is effective as of \_\_\_\_\_, 2018 (the “Effective Date”).

**TIGERCONNECT, INC.**

**COVERED ENTITY:**

\_\_\_\_\_

By: \_\_\_\_\_

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

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

By: \_\_\_\_\_

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

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

Address: \_\_\_\_\_

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