

HIPAA BUSINESS ASSOCIATE WRITTEN ASSURANCES

THESE WRITTEN ASSURANCES (“Assurances”) are provided by Cloud Rx and govern how Business Associate accesses and uses Protected Health Information. These Assurances apply to the extent you are a Covered Entity as defined in HIPAA and you have not otherwise entered into a written agreement with Business Associate governing the use and/or disclosure of protected health information that Business Associate accesses, creates, receives, maintains or transmits in the course of providing services to Covered Entity.

1. Definitions. For purposes of these Assurances, the following terms shall have the designated meanings.

(a) “*Designated Record Set*” shall mean a group of records maintained by or for Covered Entity that is (i) the medical records and billing records about individuals maintained by or for Covered Entity, (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for Covered Entity to make decisions about individuals. As used herein, the term “Record” means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for Covered Entity.

(b) “*Electronic Protected Health Information*” shall mean Protected Health Information that is transmitted or maintained in electronic media.

(c) “*HIPAA*” shall mean the Health Insurance Portability and Accountability Act of 1996, as amended, including amendments arising from the Health Information Technology for Economic and Clinical Health Act (“HITECH”), and any associated regulations.

(d) “*Individually Identifiable Health Information*” shall mean information that is a subset of health information, including demographic information collected from an individual, and is created or received by a healthcare provider, health plan, employer, or healthcare clearinghouse; and relates to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present, or future payment for the provision of healthcare to an individual; and (i) identifies the individual, or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(e) “*Privacy Standards*” shall mean the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164.

(f) “Protected Health Information” shall mean Individually Identifiable Health Information received by Business Associate from Covered Entity, or created by Business Associate on Covered Entity’s behalf, that is (i) transmitted by electronic media; (ii) maintained in any medium constituting electronic media; or (iii) transmitted or maintained in any other form or medium. “Protected Health Information” shall not include education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. § 1232g, or records described in 20 U.S.C. § 1232g(a)(4)(B)(iv).

(g) “Secretary” shall mean the Secretary of the United States Department of Health and Human Services.

(h) “Security Standards” shall mean the Security Standards for the Protection of Electronic Protected Health Information, 45 C.F.R. Parts 160 and 164.

2. Permitted Uses and Disclosures of Protected Health Information. Business Associate shall be permitted to use and disclose the Protected Health Information to provide services in accordance with the terms of Business Associate’s engagement with Covered Entity.

(a) **Uses of Protected Health Information.** Business Associate shall not, and shall ensure that its directors, officers, employees, contractors and agents do not use or disclose Protected Health Information received from Covered Entity other than as permitted or required by these Assurances or as required by law, except that Business Associate may use Protected Health Information (i) for Business Associate’s proper management and administration, or (ii) to carry out the legal responsibilities of Business Associate.

(b) **Disclosure of Protected Health Information.** Business Associate shall not, and shall ensure that its directors, officers, employees, contractors and agents do not, disclose Protected Health Information received from Covered Entity other than as permitted or required by these Assurances or as required by law, except that Business Associate may disclose Protected Health Information (i) for its own proper management and administration, or (ii) to carry out its legal responsibilities. If Business Associate discloses Protected Health Information to a third party, Business Associate must obtain, prior to making any such disclosure: (i) reasonable assurances from the receiving party that such Protected Health Information will be held confidential, and be disclosed only as required by law or for the purposes for which it was disclosed to such receiving party; and (ii) an agreement from such receiving party to immediately notify Business Associate of any breaches of the

confidentiality of the Protected Health Information, to the extent it has obtained knowledge of such breach.

3. **Safeguards.** Business Associate agrees that it will use appropriate safeguards to prevent the use or disclosure of Protected Health Information other than pursuant to the terms and conditions of these Assurances.

4. **Reporting of Uses or Disclosures of Protected Health Information.** Business Associate shall, within five (5) days of becoming aware of a use or disclosure of Protected Health Information in violation of these Assurances by Business Associate, or by a third party to which Business Associate disclosed Protected Health Information, report any such use or disclosure to Covered Entity, including breaches of unsecured Protected Health Information as required by 45 C.F.R. 164.410.

5. **Agreements by Third Parties.** In accordance with 45 C.F.R. 164.502(e)(1)(ii), Business Associate shall enter into an agreement with any agents or subcontractors that will create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate, pursuant to which such agent or subcontractor agrees to be bound by the same restrictions, terms, and conditions that apply to Business Associate pursuant to these Assurances with respect to such Protected Health Information.

6. **Access to Information.** Within ten (10) days of a request by Covered Entity for access to Protected Health Information about an individual contained in a Designated Record Set, Business Associate shall make available to Covered Entity such Protected Health Information. In the event any individual requests access to Protected Health Information directly from Business Associate, Business Associate shall within ten (10) days forward such request to Covered Entity. Any denials of access to the Protected Health Information requested shall be the responsibility of Covered Entity.

7. **Availability of Protected Health Information for Amendment.** Within ten (10) days of receipt of a request from Covered Entity for the amendment of an individual's Protected Health Information or a record regarding an individual contained in a Designated Record Set, Business Associate shall provide such information to Covered Entity for amendment and incorporate any such amendments in the Protected Health Information maintained by Business Associate as required by 45 C.F.R. § 164.526.

8. **Accounting of Disclosures.** If Business Associate makes a disclosure of Protected Health Information that must be accounted for in accordance with 45 C.F.R. § 164.528, Business Associate shall provide the Covered Entity with the following information: (i) the date of 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, which includes an explanation of the basis for such disclosure. It shall be Covered Entity's obligation to maintain the foregoing information in a manner to make an accounting of disclosures in accordance with 45 C.F.R. 164.528. In the event the request for an accounting is delivered directly to Business Associate by an individual, Business Associate shall within ten (10) days forward such request to Covered Entity. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested.

9. **Availability of Books and Records.** Business Associate hereby agrees to make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of determining Covered Entity's compliance with the Privacy and Security Standards of HIPAA.

10. **HIPAA Obligations.** To the extent that Business Associate is to carry out any obligation of Covered Entity's under the Privacy Standards, Business Associate shall comply with all Privacy Standards that apply to Covered Entity in the performance of such obligation.

11. **Electronic Protected Health Information.** To the extent that Business Associate creates, receives, maintains or transmits Electronic Protected Health Information on behalf of Covered Entity, Business Associate agrees to:

(a) Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information;

(b) Ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect it; and

(c) Report to Covered Entity any security incident of which Business Associate becomes aware.

12. **Compliance with Red Flag Rules.** As applicable, Business Associate shall develop and implement policies and procedures designed to prevent, detect and mitigate against the reasonably foreseeable risks of personal and medical identity theft in compliance with the requirements of the Identity Theft, Red Flags and Address Discrepancies under the Fair and Accurate Credit Transaction Act of 2003 ("Red Flag Rules"). Where required, Business Associate shall report the detection of any Red Flags to Covered Entity and cooperate in evaluating, investigating and responding to red flags or a known or suspected data breach.

13. **Effect of Termination of Agreement.** Upon the termination of Business Associate's engagement for services for any reason, the terms and conditions of these Assurances shall

survive such termination until such time as all Protected Health Information has been returned, de-identified or otherwise destroyed. If such return or destruction is not feasible, Business Associate shall notify Covered Entity of such fact and in such case, Business Associate agrees to extend the protections of these Assurances to the retained information and to limit further uses and disclosures of Protected Health Information to those purposes that make the return or destruction infeasible.

14. Termination of Contract. Covered Entity may terminate its engagement for services with Business Associate if

Covered Entity determines that Business Associate has violated a material term of these Assurances.

15. Third Party Rights. The terms of these Assurances are not intended, nor should they be construed, to grant any rights to any parties other than Covered Entity.

16. Effective Date. These Assurances shall be effective upon the later of the date of publication on our website or the date of receipt by Business Associate of Protected Health Information.