

# HIPAA BUSINESS ASSOCIATE AGREEMENT

Pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (collectively, "HIPAA"), the U.S. Department of Health & Human Services ("HHS") has promulgated regulations at 45 C.F.R. Parts 160 and 164 requiring certain individuals and entities subject to HIPAA to protect PHI (hereinafter, all references to the "HIPAA Privacy and Security Rules" include HIPAA and its implementing regulations).

Pursuant to the Parties' Fusion Narrate™ License Agreement ("Agreement"), Voice Systems, Inc. ("VSI") will provide certain services to Customer and may have access to PHI or Electronic PHI in fulfilling its responsibilities to Customer. To comply with applicable provisions of HIPAA and the HIPAA Privacy and Security Rules, the Parties agree to the terms and conditions of this HIPAA BAA.

**1. DEFINITIONS.** Except as otherwise defined herein, any and all capitalized terms in this HIPAA BAA shall have the definitions set forth in the HIPAA Privacy and Security Rules.

**1.1. "Business Associate"** shall mean VSI.

**1.2. "Covered Entity"** shall mean Customer.

**1.3. "PHI"** shall be limited to PHI created or received by Business Associate from or on behalf of Covered Entity. "PHI" includes Electronic PHI.

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

**2.1.** Except as otherwise limited in this HIPAA BAA, Business associate may:

**2.1.1** use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the HIPAA Privacy and Security Rules if done by Covered Entity.

**2.1.2** use PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate, and except as otherwise limited by this HIPAA BAA or the Agreement, as permitted by HIPAA, disclose PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate, provided that the disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom PHI is disclosed that the PHI 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 notifies Business Associate of any instances of which it is aware in which the confidentiality of PHI has been breached.

**2.2.** When using or disclosing PHI or when requesting PHI from the other Party, the Party which is using, disclosing or requesting the PHI must make reasonable efforts to limit PHI to the Minimum Necessary to accomplish the intended purpose of the use, disclosure, or request.

**2.3.** In accordance with the Agreement, Business Associate's subcontractor nVoq, Inc., may De-Identify Customer Data consistent with the standards set forth in 45 C.F.R. 164.514(b) and internally use the De-Identified Customer Data to create one or more sets of "Aggregate Data." "Aggregate Data" means De-Identified Customer Data aggregated with data from other customers, such that the De-Identified Customer Data cannot be reverse engineered or otherwise identified from the inspection, analysis or further processing of such information, data or content. nVoq may use, reproduce, modify, perform, and create derivative works of Aggregate Data internally solely to maintain and improve the Licensed Products, including system tuning, grammar tuning, training of acoustic models and other models, tolls and algorithms, and to develop new products and services. nVoq shall not disclose De-Identified Customer Data or Aggregate Data to any third party for any purpose without the prior written approval of Covered Entity, unless disclosure is required by law; for clarity such consent is not required for nVoq's use and

disclosure of any statistical analysis, algorithms, models, tolls, patents, or the like derived from nVoq's analysis of the Aggregate Data.

## **3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

**3.1.** Business Associate agrees to not use or further disclose PHI other than as permitted or required by this HIPAA BAA or as Required by Law.

**3.2.** Business Associate shall comply with 45 CFR §§ 164.308, 164.310, 164.312, and 164.316 of the Security Rule and shall use appropriate administrative, physical, and technical safeguards designed to ensure that PHI is not used or disclosed other than as provided by this HIPAA BAA.

**3.3.** Business Associate agrees to report to Covered Entity the use or disclosure of PHI not provided for by this HIPAA Agreement. A Breach of Unsecured PHI shall be reported in accordance with Section 4 of this HIPAA BAA. A Security Incident shall be reported to Covered Entity within ten (10) business days of discovery. For purposes of this HIPAA BAA, "Security Incident" shall have the same meaning as such term under the HIPAA Privacy and Security Rules, but excluding the following: (i) "pings" on an information system firewall; (ii) port scans; (iii) unsuccessful attempts to log on to an information system or enter a database with an invalid password or user name; (iv) denial-of-service attacks that do not result in a server being taken offline or material degradation of service; or (v) any combination of the above, so long as no such incident results in unauthorized access, use, disclosure, modification, destruction, or inaccessibility of PHI.

**3.4.** Business Associate agrees to ensure that any agent or subcontractor of Business Associate to which it provides electronic PHI or PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees in writing to materially the same restrictions, requirements, and conditions that apply through this HIPAA BAA to Business Associate with respect to such information, including all restrictions, requirements, and conditions that apply to a "business associate" under HIPAA and the HIPAA Privacy and Security Rules.

**3.5.** At the request of Covered Entity and in a reasonable time and manner, Business Associate agrees to make available PHI required for Covered Entity to respond to an Individual's request for access to his or her PHI in a Designated Record Set in accordance with Section 164.524 of the HIPAA Privacy and Security Rules.

**3.6.** At the request of Covered Entity and in a reasonable time and manner, Business Associate agrees to make any amendments to PHI in a Designated Record Set as directed or agreed to by Covered Entity in accordance with the requirements of Section 164.526 of the HIPAA Privacy and Security Rules, or take other measures as necessary to satisfy Covered Entity's obligations under Section 164.526 of the HIPAA Privacy and Security Rules.

**3.7.** Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures as required by Section 164.528 of the HIPAA Privacy and Security Rules, and do so in the time and manner Covered Entity reasonably specifies in advance in writing.

**3.8.** Business Associate agrees that it will make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for the purpose of determining Business Associate's and Covered Entity's compliance with the HIPAA Privacy and Security Rules, in a time and manner designated by the Secretary.

**3.9.** Business Associate agrees that it will not use or disclose PHI for marketing or sale purposes.

**3.10.** Each party shall comply with all applicable federal, state and local laws and regulations relating to data security and privacy of personally identifiable information or related information. To the extent that the HIPAA Privacy and Security Rules conflict with such federal, state or local laws regarding the degree of protection provided for PHI, each party shall comply with the more restrictive protection requirement.

#### **4. BUSINESS ASSOCIATE'S MITIGATION AND BREACH NOTIFICATION OBLIGATIONS**

**4.1.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this HIPAA BAA.

**4.2.** Business Associate will report to Covered Entity within ten (10) business days of discovery any actual or suspected Breach of Unsecured PHI as required at 45 CFR 164.410. Such report shall include, to the extent possible:

**4.1.1** The identity of the Individual(s) whose PHI has been, or is reasonably believed to have been, the subject of the event;

**4.1.2** A brief description of what happened, including the date of the event and the date of discovery thereof, if known;

**4.1.3** A description of the types of PHI that were involved in the event (such as full name, Social Security number, date of birth, home address, account number, diagnosis code, or other types of information);

**4.1.4** A brief description of what Business Associate is doing to investigate the event, to mitigate harm to Individuals, and to protect against any further breaches.

Business Associate shall use its reasonable efforts to provide such information in its initial report to Covered Entity pursuant to this Section. To the extent that Business Associate is unable to provide all such information within the timeframe specified above, Business Associate shall use its best efforts to provide such information to Covered Entity on a rolling basis immediately as the information becomes available, and in no case later than 60 calendar days after discovery of the actual or suspected event or such earlier date as may be specified by applicable federal, state, or local law or regulation. Business Associate shall reasonably cooperate with Covered Entity's efforts to investigate, respond to, redress and mitigate the consequences of any event required to be reported under this Section.

#### **5. OBLIGATIONS OF COVERED ENTITY**

**5.1.** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

**5.2.** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI to which Covered Entity has agreed in accordance with Section 164.522 of the HIPAA Privacy and Security Rules, and Covered Entity shall inform Business Associate of the termination of any such restriction, and the effect that such termination shall have, if any, upon VSI's use and disclosure of such PHI.

**5.3.** Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy and Security Rules if done by Covered Entity.

#### **6. TERM AND TERMINATION**

**6.1. Term.** The terms and conditions of this HIPAA BAA shall be effective as of the Effective Date of the Agreement, and shall terminate upon expiration or termination of the Agreement. For clarity, a material breach of this HIPAA BAA shall constitute a material breach subject to termination of the Agreement pursuant to Section 12.4 (Termination of Agreement for Cause) of the Agreement.

**6.2. Effect of Termination.** Except as provided in this Section 6.2, upon termination of this HIPAA BAA, Business Associate shall within thirty (30) business days, or such later time as may be agreed by Covered Entity, return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Neither Business Associate nor its subcontractors or agents shall retain copies of the PHI. In the event that Business Associate reasonably determines that returning or destroying the PHI is infeasible, Business Associate shall provide within thirty (30) days to Covered Entity notification of the conditions that make return or

destruction infeasible; Business Associate shall extend the protections of this HIPAA BAA 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**

**7.1. References.** A reference in this HIPAA BAA to a definition or section in the HIPAA Privacy and Security Rules means the definition or section as in effect or as amended. In the event that a regulatory citation contained within this HIPAA Agreement should change prior to this HIPAA Agreement being amended, the regulatory citation in this Addendum shall be deemed to have been changed to the new citation.

**7.2. Survival.** The obligations of Business Associate under Section 6.2 of this HIPAA BAA shall survive the expiration, termination, or cancellation of this HIPAA BAA as set forth herein.

**7.3. Amendment.** This HIPAA Agreement may be amended or modified only in a writing signed by the Parties. The Parties agree that they will negotiate amendments to this HIPAA Agreement to conform to any changes in the HIPAA Privacy and Security Rules as are necessary for the parties to comply with the current requirements of the HIPAA Privacy and Security Rules or the Health Insurance Portability and Accountability Act. In addition, in the event that either Party believes in good faith that any provision of this HIPAA Agreement fails to comply with the then-current requirements of the HIPAA Privacy and Security Rules or other applicable law, then such Party shall notify the other Party of its belief in writing and the Parties shall address in good faith such concern and amend the terms of this HIPAA Agreement, if necessary, to bring it into compliance.

**7.4. Interpretation.** Any ambiguity of this HIPAA Agreement shall be resolved in favor of a meaning that permits Business Associate and Covered Entity to comply with the HIPAA Privacy and Security Rules.

**7.5. Relationship to Agreement.** Pursuant to Section 9.4 (Protected Health Information) of the Agreement, this HIPAA BAA is incorporated into the Agreement. To the extent that the provisions of this HIPAA BAA and the Agreement conflict, the provisions of this HIPAA BAA shall control, but only with respect to the subject matter of this HIPAA BAA.