

## **HIPAA Business Associate Agreement**

This HIPAA Business Associate Agreement (“BAA”), effective as of the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (“Effective Date”), is made by and between \_\_\_\_\_ (“Covered Entity”) and da Vinci Motion Graphics, L.L.C. d/b/a da Vinci Network Services (the “Business Associate”) for the purpose of compliance with the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, and regulations issued pursuant thereto (“HIPAA”). This BAA hereby amends and is incorporated into any underlying agreement between COVERED ENTITY and the Business Associate (the “Agreement”). In consideration of the foregoing and of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the foregoing and as follows:

### **I. Definitions:**

- a. **Individual.** "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- b. **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.
- c. **Protected Health Information.** "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- d. **Required By Law.** "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.
- e. **Secretary.** "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- f. **Catch-all definition:** Terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in the Privacy Rule.

### **II. Obligations and Activities of Business Associate**

- a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the BAA or as required by law.

- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this BAA.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this BAA.
- d. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this BAA of which it becomes aware.
- e. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such information.
- f. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, 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, or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- g. Business Associate 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.
- h. Business Associate agrees to provide to Covered Entity or an Individual, information collected in accordance with this section of this BAA, 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.

### III. Permitted Uses and Disclosures by Business Associate

- a. Except as otherwise limited in this BAA, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- b. Except as otherwise limited in this BAA, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or 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 notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- c. Except as otherwise limited in this BAA, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).
- d. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

### IV. Obligations of Covered Entity

- a. Covered Entity shall notify Business Associate 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 Business Associate's use or disclosure of Protected Health Information.
- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

- c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity 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 Protected Health Information.

V. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

VI. Term and Termination

- a. Term. The Term of this BAA shall be effective as of the Effective Date, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, 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 Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - 1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this BAA if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
  - 2. Immediately terminate this BAA if Business Associate has breached a material term of this BAA and cure is not possible; or
  - 3. If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.

c. Effect of Termination.

1. Except as provided in paragraph (2) of this section, upon termination of this BAA, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon determination that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this BAA to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

VII. Miscellaneous

- a. Regulatory References. A reference in this BAA to a section in the Privacy 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 BAA from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- c. Survival. The respective rights and obligations of Business Associate under Section VI of this BAA shall survive the termination of this BAA.
- d. Interpretation. Any ambiguity in this BAA shall be resolved to permit Covered Entity to comply with the Privacy Rule.

**IN WITNESS WHEREOF**, duly authorized representatives of each of Covered Entity and the Business Associate have executed this BAA as of the Effective Date.

\_\_\_\_\_

**da Vinci Motion Graphics, L.L.C.**

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

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

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

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

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

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