

BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement ("BAA", "Agreement"), is entered into by and between [Insert Clinic Name] hereinafter referred to as "Covered Entity", and BoomTech LLC hereinafter referred to as "Business Associate" (individually, a "Party" and collectively, the "Parties").

WITNESSETH:

WHEREAS, Business Associate and Covered Entity have entered into an agreement under which the Business Associate provides certain administrative services ("Services") to the Covered Entity;

WHEREAS, this Agreement between Covered Entity and Business Associate is necessary in order for the parties to meet the requirements of Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as set forth in 45 CFR Parts 160 and 164;

WHEREAS, The Parties acknowledge and agree that Business Associate may create, receive, maintain, transmit, use or disclose Protected Health Information if within the scope of, and necessary to achieve, the obligations and responsibilities of the Business Associate in performing on behalf of, or providing Services to, the Covered Entity pursuant to the Business Associate's Terms of Services available at / <https://boomte.ch/terms.html> /;

WHEREAS, both the Business Associate and the Covered Entity intend to comply with HIPAA in order to protect the privacy and to provide for the security of Protected Health Information and Electronic Protected Health Information disclosed to or created by the Business Associate;

WHEREAS, both the Business Associate and the Covered Entity wish to set forth the terms and conditions pursuant to which the Protected Health Information is protected in terms of its privacy and security and otherwise handled by virtue of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound, the Parties agree as follows:

1. DEFINITIONS

Capitalized terms used in this Agreement shall have the meanings assigned to them as outlined in HIPAA and its related regulations, unless otherwise provided for in this Agreement.

2. OBLIGATIONS OF BUSINESS ASSOCIATE

Business Associate shall:

- 2.1 Recognize that HITECH (the Health Information Technology for Economic and Clinical Health Act of 2009) and the regulations thereunder (including 45 C.F.R. Sections 164.308, 164.310, 164.312, and 164.316), apply to the Business Associate of the Covered Entity in the same manner that such sections apply to the Covered Entity;
- 2.2 Use or disclose any Protected Health Information solely: (a) for meeting its obligations as set forth in any agreements between the Parties evidencing their business relationship, or (b) as required by applicable law and (c) as would be permitted by the HIPAA Security and Privacy Rule if such use or disclosure were made by Covered Entity. All such uses and disclosures shall be subject to the limits set forth in 45 CFR § 164.514 regarding limited data sets and 45 CFR § 164.502(b) regarding the minimum necessary requirements;
- 2.3 Use appropriate safeguards (including implementing administrative, physical, and technical safeguards for Electronic Protected Health Information) to protect the confidentiality, integrity, and availability of and to prevent the use or disclosure of the PHI other than as provided for by this Agreement;
- 2.4 Comply with each applicable requirement of 45 C.F.R. Part 162 if the Business Associate conducts Standard Transactions for or on behalf of the Covered Entity;

- 2.5 The Business Associate agrees to report to the Covered Entity within ten (10) business days of becoming aware of any use or disclosure of Protected Health Information not provided for by this Agreement;
- 2.6 Ensure that any subcontractors or agents who receive or are exposed to Protected Health Information (whether in electronic or other format) are explained the Business Associate obligations under this paragraph and agree to the same restrictions and conditions;
- 2.7 Make available Protected Health Information in accordance with the individual's rights as required under the HIPAA regulations;
- 2.8 Account for Protected Health Information disclosures for up to the past six (6) years as requested by Covered Entity, which shall include: (a) dates of disclosure, (b) names of the entities or persons who received the PHI, (c) a brief description of the PHI disclosed, and (d) a brief statement of the purpose and basis of such disclosure;
- 2.9 Incorporate any amendments or corrections to Protected Health Information when notified by Covered Entity or enter into a Business Associate Agreement or other necessary agreements to comply with HIPAA.

3. OBLIGATIONS OF COVERED ENTITY

Covered Entity shall:

- 3.1 Be responsible for implementing appropriate privacy and security safeguards in order to protect Protected Health Information in compliance with HIPAA and this BAA;
- 3.2 Not include Protected Health Information in any services that are not or cannot be HIPAA compliant,
- 3.3 Encrypt all Protected Health Information stored or transmitted outside the Services.
- 3.4 Obtain any necessary authorizations and permissions that may be required under applicable law prior to placing Protected Health Information on the Services.
- 3.5 Notify the Business Associate of any restriction to the use or disclosure of Protected Health Information that the Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of Protected Health Information.
- 3.6 Customer shall not request or cause Business Associate to make a Use or Disclosure of Protected Health Information in a manner that does not comply with HIPAA or this BAA.

4. TERM

The term of this BAA will be applicable on the date of last signature by the Parties and shall remain in force and effect until terminated pursuant to Section 5 hereinbelow.

5. TERMINATION

- 5.1 Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement upon material breach of this Agreement by the other Party provided that the breaching Party does not cure such breach within thirty (30) days of notice of the breach.
- 5.2 If neither cure nor termination is feasible, the Covered Entity shall report the breach to the Secretary.
- 5.3 Covered Entity or Business Associate may commence termination of this Agreement by providing 60 days prior written notice of termination to the other Party.
- 5.4 This Agreement will automatically terminate without any further action of the Parties upon the termination of the Services provided by the Business Associate to or on behalf of the Covered Entity.

6. RETURN OR DESTRUCTION OF PROTECTED HEALTH INFORMATION UPON TERMINATION

- 6.1 Upon the termination of this Agreement, unless otherwise directed by Covered Entity, Business Associate shall either return or destroy all Protected Health Information received from the Covered Entity or created or received by Business Associate on behalf of the Covered Entity in which Business Associate maintains in any form.
- 6.2 Business Associate shall not retain any copies of such Protected Health Information. Notwithstanding the foregoing, in the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible upon termination of this Agreement, Business Associate shall provide to Covered Entity notification of the condition that makes return or destruction infeasible.
- 6.3 To the extent that it is not feasible for Business Associate to return or destroy the Protected Health Information, the terms and provisions of this Agreement shall survive such termination or expiration and such Protected Health Information shall be used or disclosed solely as permitted by law for so long as Business Associate maintains such Protected Health Information.

7. NO THIRD PARTY BENEFICIARIES

The parties agree that the terms of this Agreement shall apply only to themselves, their respective successors and assigns, and are not for the benefit of any third party beneficiaries.

8. AMENDMENT

Business Associate and Covered Entity may amend this Agreement to the extent necessary to allow either Party to comply with the requirements of HIPAA. All such amendments shall be made in a writing signed by both Parties.

9. INTERPRETATION

Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Parties to comply with the then most current version of HIPAA and the HIPAA privacy regulations.

10. SURVIVAL

The obligations and right of Covered Entity and Business Associate imposed by this Agreement shall survive any expiration or termination of this Agreement.

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| [Covered Entity 's legal name]: | | BoomTech LLC: | |
| Signature | | Signature | |
| Name | | Name | |
| Title | | Title | |
| Address | | Address | |
| Email | | Email | |
| Date | | Date | |