

## Business Associate Agreement

This Business Associate Agreement (“Agreement”) is entered into (“Effective Date”) between the customer executing this Agreement below (“CUSTOMER”, for itself and its parents, subsidiaries, affiliates, officers, agents, directors, employees and assigns; and also potentially a Covered Entity) and SWERVEPAY LLC, a Delaware limited liability company, including its parents, subsidiaries, affiliates, officers, agents, directors, employees and assigns (collectively and each a “Business Associate”).

### 1. DEFINITIONS

Capitalized terms used, but not otherwise defined in this Agreement, shall have the same meanings given to them under 45 CFR Parts 160 and Subparts A and E of 164 (“Privacy Rule”) and 45 CFR Part 164 Subpart D (“Breach Notification Rule”) . Unless expressly stated otherwise, “PHI” (Protected Health Information) shall include electronic PHI (“EPI”) throughout this Agreement.

### 2. PURPOSE FOR WHICH BUSINESS ASSOCIATE MAY USE OR DISCLOSE PHI

Except as otherwise limited by this Agreement, Business Associate may Use or make Disclosure of PHI provided or made available from CUSTOMER, or created on behalf of CUSTOMER, solely to perform any function, activity, or service for, or on behalf of, CUSTOMER pursuant to the parties’ written agreements, (“Customer Agreement(s)”) as amended from time to time—as long as such Use or Disclosure would not violate the Privacy Rule or the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) if Used or Disclosed by CUSTOMER or the minimum necessary policies and procedures of CUSTOMER.

### 3. BUSINESS ASSOCIATE OBLIGATIONS

Business Associate shall:

- a. Not Use or make Disclosure of PHI other than as permitted or required by this Agreement or as Required by Law. As required by § 164.502(b), when Using or Disclosing PHI, or requesting PHI from CUSTOMER, Business Associate shall make best efforts to limit the PHI to the minimum necessary to accomplish the intended purpose of the Use, Disclosure, or request.
- b. Establish, maintain, and use reasonable and appropriate safeguards to prevent Use or

Disclosure of PHI, other than as permitted under this Agreement.

- c. Maintain privacy and security policies that comply with all applicable laws and regulations. CUSTOMER may request a copy of Business Associate's privacy and security policies.
- d. Mitigate, to the extent reasonable, 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 Agreement.
- e. In accordance with § 164.410(a), report to CUSTOMER any Use or Disclosure of PHI of which Business Associate becomes aware that is not provided for, or allowed by, this Agreement, whether or not the Use or Disclosure arises to the level of a Breach under HIPAA. Business Associate shall send a report to CUSTOMER within five calendar days of becoming aware of such unauthorized Use or Disclosure. Such report shall include the following, to the extent available to Business Associate, and any other items Required By Law:
  - i. The identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, Used or Disclosed.
  - ii. A description of what happened.
  - iii. A description of the types of unsecured PHI that were involved in the unauthorized Use or Disclosure (e.g. name, social security number, date of birth, CPT, diagnosis, etc.)
  - iv. Recommended steps Individuals should take to protect themselves from harm resulting from the Breach.
  - v. A description of what is being done to investigate the Breach, to mitigate harm to Individuals, and to protect against further Breaches.
  - vi. Contact information for Individuals to obtain additional information.
- f. Business Associate shall cooperate with CUSTOMER in the investigation of a suspected breach and shall provide a final investigation report at the completion of its investigation, which investigation shall not exceed 30 days) In the event the unauthorized Use or Disclosure constitutes a Breach of Unsecured Protected Health Information, Business Associate shall, upon Customer's request, coordinate with CUSTOMER in the preparation of any notifications to patients or government agencies Required by Law, and shall allow CUSTOMER to provide such notice if CUSTOMER determines it is in the best interests of its patients for CUSTOMER to send such notice, insofar as allowed by law.
- g. In accordance with §§ 164.502(e)(1)(ii) and 164.308(b)(1), ensure that any of Business Associate's agents, including Subcontractors that create, receive, maintain, or transmit PHI

on behalf of CUSTOMER, agree in writing to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI.

- h. At CUSTOMER's request, provide prompt access to PHI to CUSTOMER in order for Customer to meet its requirements under 45 CFR § 164.524.
- i. Make any amendment(s) to PHI in a Designated Record Set that CUSTOMER directs or agrees to pursuant to 45 CFR § 164.526, in the time and manner that CUSTOMER directs. Business Associate will not respond directly to an Individual's request for an amendment of their PHI but will refer the Individual to CUSTOMER so it can coordinate and prepare a timely response to the Individual.
- j. Promptly make available to the Secretary of the U.S. Department of Health and Human Services all internal practices, books and records relating to the Use or Disclosure of PHI received from CUSTOMER, or created by Business Associate on behalf of CUSTOMER, for purposes of determining CUSTOMER's compliance with the Privacy Rule. Business Associate shall promptly notify CUSTOMER of Business Associate's receipt of such request by the Secretary.
- k. Document such Disclosures of PHI and information related to such Disclosures as would be required for CUSTOMER to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.
- l. Promptly provide CUSTOMER with information collected in accordance with Section (k) above, to permit CUSTOMER to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate will refer any Individual's request for an accounting to CUSTOMER.
- m. To the extent Business Associate conducts Standard Transactions with, or on behalf of, CUSTOMER, comply with each applicable requirement of 45 CFR Part 162, and require the same of any subcontractor or agent involved with the conduct of such Standard Transactions.
- n. Comply with any agreement CUSTOMER may make to restrict Use or Disclosure of PHI pursuant to 45 CFR § 164.522 provided that CUSTOMER notifies Business Associate in writing of any such restriction.
- o. To the extent Business Associate is delegated to perform any of CUSTOMER's obligations under Subpart E of 45 CFR Part 164, Business Associate shall comply with the all requirements that apply to CUSTOMER under Subpart E in the performance of such obligations.
- p. Business Associate shall abide by all applicable requirements for business associates set forth the HITECH Act, which was adopted as part of the American Recovery and

Reinvestment Act of 2009, and its implementing regulations, and which makes business associates directly liable for compliance with many of the same requirements as CUSTOMER under both the Privacy Rule and the Security Rule. Accordingly, Business Associate shall, among other things, implement adequate policies, procedures, and practices to prevent, detect, evaluate, report, and mitigate breaches of PHI; and perform regular risk analyses.

#### 4. PERMITTED USE AND DISCLOSURE BY BUSINESS ASSOCIATE

Business Associate may:

- a. Disclose PHI in its possession to third parties for Business Associate's proper management and administration, or to fulfill any of its legal responsibilities, *provided that* (i) the Disclosures are Required By Law, or (ii) Business Associate has received reasonable assurances evidenced by written contract from the third party that the PHI will be held confidentially, and Used or further Disclosed only as Required By Law or for the purpose for which it was Disclosed to the third party, and that the third party will notify Business Associate (who will in turn promptly notify CUSTOMER) of any instances of which it is aware in which the confidentiality of the PHI has been breached. Use or Disclosure to third parties shall be the minimum necessary to perform or fulfill the specific function required.
- b. Use PHI in its possession to provide Data Aggregation services to CUSTOMER as permitted by 45 CFR § 164.504(e)(2)(i)(B), if CUSTOMER directs such services.

#### 5. OBLIGATIONS OF CUSTOMER

- a. CUSTOMER shall notify Business Associate of any limitation(s) in its Notice of Privacy Practices of CUSTOMER in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.
- b. CUSTOMER shall notify Business Associate of any changes in, or revocation of, permission by Individual to Use or Disclose PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.
- c. CUSTOMER shall notify Business Associate of any restriction to the use or disclosure of PHI that CUSTOMER 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 PHI.
- d. CUSTOMER shall not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under the Privacy Rule if done by CUSTOMER, unless such Use or Disclosure is necessary for the purposes of Data Aggregation or management and administrative activities of Business Associate under this Agreement.

## 6. TERMINATION

- a. The term of this Agreement shall be effective as of the Effective Date, and shall terminate when all of the PHI provided by CUSTOMER to Business Associate, or created or received by Business Associate on CUSTOMER's behalf, is destroyed or returned to CUSTOMER. If it is infeasible to return or destroy PHI, Business Associate shall protect that information as provided in Section 7 below.
- b. Upon a party's knowledge of a material breach of the terms of this Agreement by the other party, the non-breaching party shall, in accordance with the notification requirement set forth in the Customer Agreement(s), provide an opportunity for the party in breach to cure the breach or end the violation. The non-breaching party may terminate this Agreement if the party in breach does not cure the breach or end the violation within the cure period set forth in the Customer Agreement(s). If there is no cure period in the Customer Agreement(s) for material breaches, the non-breaching party may provide the party in breach with a cure period or terminate the Customer Agreement(s) immediately, at its option.

## 7. RETURN OR DESTRUCTION OF PHI

- a. Upon termination of this Agreement for any reason, Business Associate shall, within thirty (30) days of termination, return to CUSTOMER any and all PHI Business Associate or its subcontractors or agents received from CUSTOMER, or from another party on behalf of CUSTOMER, or was created by Business Associate or its Subcontractors or agents on behalf of CUSTOMER that is maintained by Business Associate or its Subcontractors or agents in any form whatsoever, including any copies or replicas. If returning the PHI to CUSTOMER is not feasible for Business Associate, Business Associate shall destroy any and all PHI maintained by it or its subcontractors or agents in any form whatsoever, including any copies or replicas. . It shall destroy PHI to the destruction standards required by the Health Resources and Services Administration and notify CUSTOMER of destruction. Should the return or destruction of the PHI be determined by Business Associate to be not feasible, Business Associate shall provide to CUSTOMER notification of the conditions that make return or destruction infeasible within thirty days of termination. Business Associate shall extend the protections of this Agreement to such PHI and limit further Uses and Disclosures to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. Similarly, Business Associate shall require its subcontractors or agents to agree to extend the same protections to PHI and similarly limit its Use or Disclosure. This provision shall survive the termination of this Agreement.

## 8. MISCELLANEOUS

- a. The parties recognize that HIPAA laws and regulations may change over time; therefore, the parties agree that this Agreement will be automatically amended from time to time to incorporate applicable future amendments to the Privacy Rule and HIPAA that affect the obligations of the parties.
- b. CUSTOMER is the exclusive owner of PHI generated or used under this Agreement.
- c. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CUSTOMER, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- d. Any ambiguity in this Agreement shall be resolved to permit CUSTOMER to comply with the Privacy Rule.
- e. This Agreement may be executed in counterparts. A facsimile or electronic signature shall be deemed the original signature.
- f. Notices should be sent to the addresses on the signature page, with copies to the email addresses listed, unless otherwise amended or changed in writing pursuant to this Agreement.

Date:
By:
Name:
Title:
Address:
,
Email:

