

BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT (the “BAA”) is made and entered into as of [] by and between:

Covered Entity: [],
a(n) LLC Corporation Partnership Other: [] (“Covered Entity”)

Business Associate: Testing Revolution, LLC dba Reverb, a(n) Individual LLC Corporation Partnership Other (“Business Associate”, in accordance with the meaning given to those terms at 45 CFR § 164.501). In this BAA, Covered Entity and Business Associate are each a “Party” and, collectively, are the “Parties”.

BACKGROUND

I. Covered Entity is either a “covered entity” or “business associate” of a covered entity as each are defined under the Health Insurance Portability and Accountability Act of 1986, Public Law 104-191, as amended by the HITECH Act (as defined below) and the related regulations promulgated by HHS (as defined below) (collectively, “HIPAA”) and, as such, is required to comply with HIPAA’s provisions regarding the confidentiality and privacy of Protected Health Information (as defined below);

II. The Parties have entered into or will enter into one or more agreements under which Business Associate provides or will provide certain specified services to Covered Entity (collectively, the “Agreement”);

III. In providing services pursuant to the Agreement, Business Associate will have access to Protected Health Information;

IV. By providing the services pursuant to the Agreement, Business Associate will become a “business associate” of the Covered Entity as such term is defined under HIPAA;

V. Both Parties are committed to complying with all federal and state laws governing confidentiality and privacy of health information, including, but not limited to, the Standards for Privacy of Individually Identifiable Health Information found at 45 CFR Part 160 and Part 164, Subparts A and E (collectively, the “Privacy Rule”); and

VI. Both Parties intend to protect the privacy and provide for the security of Protected Health Information disclosed to Business Associate pursuant to this Agreement, HIPAA and other applicable laws.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and the continued provision of PHI by Covered Entity to Business Associate under the Agreement in reliance on this BAA, the Parties agree as follows:

1. Definitions.

For the purposes of this BAA, the Parties give the following meaning to each of the terms in this Section 1 below. Any capitalized term used in this BAA, but not otherwise defined, has the meaning given to that term in the Privacy Rule or pertinent law.

- A. “**Affiliate**” means a subsidiary or affiliate of Covered Entity that is, or has been, considered a covered entity, as defined by HIPAA.
- B. “**Breach**” means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the Privacy Rule which compromises the security or privacy of the PHI, as defined in 45 CFR § 164.402.
- C. “**Breach Notification Rule**” means the portion of HIPAA set forth in Subpart D of 45 CFR Part 164.
- D. “**Data Aggregation**” means, with respect to PHI created or received by Business Associate in its capacity as the “business associate” under HIPAA of Covered Entity, the combining of such PHI by Business Associate with the PHI received by Business Associate in its capacity as a business associate of one or more other “covered entity” under HIPAA, to permit data analyses that relate to the Health Care Operations of the respective covered entities. The meaning of “data aggregation” in this BAA shall be consistent with the meaning given to that term in the Privacy Rule.
- E. “**Designated Record Set**” has the meaning given to such term under the Privacy Rule including 45 CFR § 164.501.
- F. “**De-Identify**” means to alter PHI such that the resulting information meets the requirements described in 45 CFR §§ 164.514(a) and (b), such that the information is no longer considered PHI under HIPAA and is no longer subject to the restrictions of this BAA.
- G. “**Electronic PHI**” means any PHI maintained in or transmitted by electronic media as defined in 45 CFR § 160.103.
- H. “**Health Care Operations**” has the meaning given to that term in 45 CFR § 164.501.
- I. “**HHS**” means the U.S. Department of Health and Human Services.
- J. “**HITECH Act**” means the Health Information Technology for Economic and Clinical Act, enacted as part of the American Recovery and Reinvestment Act of 2009, Public Law 111-005.
- K. “**Individual**” has the same meaning given to that term in 45 CFR §§ 164.501 and 160.130 and includes a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- L. “**Privacy Rule**” means that portion of HIPAA set forth in 45 CFR Part 160 and Part 164, Subparts A and E.
- M. “**Protected Health Information**” or “PHI” has the meaning given to the term “protected health information” in 45 CFR §§ 164.501 and 160.103, limited to the information created or received by Business Associate from or on behalf of the Covered Entity.
- N. “**Security Incident**” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- O. “**Security Program**” means the administrative, technical, and physical safeguards maintained by Business Associate as set forth in the Agreement between the Parties, including the SOC 2-aligned controls described therein, as updated from time to time.
- P. “**Security Rule**” means the Security Standards for the Protection of Electronic Health Information provided in 45 CFR Part 160 and Part 164, Subparts A and C.
- Q. “**Unsecured Protected Health Information**” or “Unsecured PHI” means any “protected health information” as defined in 45 CFR §§ 164.501 and 160.103 that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or

methodology specified by the HHS Secretary in the guidance issued pursuant to the HITECH Act and codified at 42 USC § 17932(h).

2. Use and Disclosure of PHI.

A. Except as otherwise provided in this BAA, Business Associate may use or disclose PHI as reasonably necessary to provide the services described in the Agreement to Covered Entity, and to undertake other activities of Business Associate permitted or required by this BAA or as required by law.

B. Except as otherwise limited by this BAA or federal or state law, Covered Entity authorizes Business Associate to use the PHI in its possession for the proper management and administration of Business Associate's business and to carry out its legal responsibilities. Business Associate may disclose PHI for its proper management and administration, provided that (i) the disclosures are required by law; or (ii) Business Associate obtains, in writing, prior to making any disclosure to a third party (a) reasonable assurances from this third party that the PHI will be held confidential as provided under this BAA and used or further disclosed only as required by law or for the purpose for which it was disclosed to this third party, and (b) an agreement from this third party to notify Business Associate immediately of any breaches of the confidentiality of the PHI, to the extent it has knowledge of the breach.

C. Business Associate will not use or disclose PHI in a manner other than as provided in this BAA, as permitted under the Privacy Rule, or as required by law. Business Associate will use or disclose PHI, to the extent practicable, as a limited data set or limited to the minimum necessary amount of PHI to carry out the intended purpose of the use or disclosure, in accordance with Section 13405(b) of the HITECH Act (codified as 42 USC § 17935(b)) and any of the Act's implementing regulations adopted by HHS, for each use or disclosure of PHI.

D. Upon request, Business Associate will make available to Covered Entity any of Covered Entity's PHI that Business Associate or any of its agents or subcontractors have in their possession.

E. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

3. Safeguards Against Misuse of PHI.

Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI other than as provided by the Agreement or this BAA. Business Associate agrees to implement and maintain the administrative, physical, and technical safeguards described in its Security Program, which are designed to reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity. Such safeguards shall conform to the requirements of the Security Rule and shall be no less protective than the controls set forth in the Security Program. Business Associate agrees to take reasonable steps, including providing adequate security training to its employees, to ensure compliance with this BAA and to ensure that the actions or omissions of its employees or agents do not cause Business Associate to breach the terms of this BAA. Upon Covered Entity's written request, Business Associate shall make available a summary of its then-current Security Program controls or, if available, a copy of its most recent SOC 2 Type II report, HITRUST certification, or other independent third-party audit report, subject to reasonable confidentiality obligations. Covered Entity agrees not to re-disclose any such audit report provided by Business Associate.

4. Reporting Security Incidents.

Business Associate will report to Covered Entity in writing any use or disclosure of PHI not provided for by this BAA of which it becomes aware. Business Associate further agrees to report to Covered Entity any confirmed Security Incident affecting Electronic PHI of Covered Entity of which it becomes aware.

Business Associate shall report any confirmed Security Incident within seventy-two (72) hours of confirmation. Where a Security Incident cannot be confirmed within seventy-two (72) hours of initial detection, Business Associate shall provide Covered Entity with written notice of the suspected incident within seventy-two (72) hours of detection and a follow-up written report upon confirmation. This reporting obligation shall not apply to Security Incidents that are inconsequential, unsuccessful, or that do not result in any unauthorized access to, use, or disclosure of PHI, such as routine port scans or unsuccessful login attempts, provided that Business Associate tracks such attempts and makes records available to Covered Entity upon request.

5. Reporting Breaches of Unsecured PHI.

Business Associate will notify Covered Entity in writing promptly upon the discovery of any Breach of Unsecured PHI in accordance with the requirements set forth in 45 CFR § 164.410, and in no case later than seventy-two (72) hours after the discovery of a Breach. Such notification shall include, to the extent then known: (a) a description of the nature of the Breach; (b) the categories and approximate number of Individuals and records affected; (c) the likely consequences of the Breach; and (d) the measures taken or proposed to address the Breach, including measures to mitigate its adverse effects. Business Associate shall provide timely updates as additional information becomes available. Business Associate will reimburse Covered Entity for any reasonable and documented costs incurred by Covered Entity in complying with the requirements of Subpart D of 45 CFR Part 164 that are imposed on Covered Entity as a direct and proximate result of a Breach caused by Business Associate's acts or omissions; provided, however, that such reimbursement obligation shall not apply to the extent that a Breach is caused or materially contributed to by Covered Entity's own acts or omissions, or by Covered Entity's failure to comply with its obligations under this BAA or applicable law.

6. Mitigation of Disclosures of PHI.

Business Associate will take reasonable measures to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of any use or disclosure of PHI by Business Associate or its agents or subcontractors in violation of the requirements of this BAA.

7. Agreements with Agents or Subcontractors.

Business Associate will ensure that any of its agents or subcontractors that have access to, or to which Business Associate provides, PHI agree in writing to restrictions and conditions concerning uses and disclosures of PHI that are no less restrictive than those contained in this BAA, and agree to implement reasonable and appropriate safeguards to protect any Electronic PHI that such agent or subcontractor creates, receives, maintains, or transmits on behalf of Business Associate or, through Business Associate, Covered Entity. Business Associate shall provide Covered Entity with reasonable prior written notice of any subcontract or agreement relating to the Agreement under which an agent or subcontractor will receive PHI, and shall maintain and make available to Covered Entity upon request a current list of all such agents and subcontractors. Business Associate shall ensure that all such subcontracts and agreements provide the same level of privacy and security protections as this BAA, and Business Associate shall remain fully liable to Covered Entity for the acts and omissions of any such agent or subcontractor with respect to PHI to the same extent as if Business Associate had performed the relevant services directly.

8. Artificial Intelligence and Automated Processing of PHI.

The Parties acknowledge that Business Associate's Software Products use artificial intelligence and large language model ("LLM") technologies to assist in the generation of neuropsychological reports and related clinical documentation. The following provisions govern Business Associate's use of PHI in connection with such technologies:

A. Business Associate represents and warrants that it does not use PHI to train, fine-tune, or otherwise develop any internal artificial intelligence or machine learning models. PHI is not retained for model training purposes.

B. When PHI is processed through third-party commercial LLM services in connection with the Software Products, Business Associate represents and warrants that it applies technical de-identification or redaction measures prior to transmission, such that the information transmitted to such third-party services does not constitute PHI as defined under HIPAA. Business Associate shall ensure that any third-party LLM provider used in connection with the Software Products is contractually prohibited from using transmitted content to train its own models.

C. Business Associate may use anonymized or de-identified excerpts from neuropsychological reports generated through the Software Products as illustrative examples of desired output quality, format, or style for purposes of improving the Software Products (“Output Examples”). Business Associate represents and warrants that: (i) Output Examples shall be limited to the minimum necessary content to serve the improvement purpose; (ii) Output Examples shall be De-Identified prior to any such use, consistent with the definition of “De-Identify” in Section 1(F) of this BAA; and (iii) once De-Identified in accordance with 45 CFR §§ 164.514(a) and (b), such Output Examples are no longer PHI and are not subject to the restrictions of this BAA or HIPAA. Business Associate shall maintain documented procedures for the de-identification of Output Examples and shall make such procedures available to Covered Entity upon request.

D. Business Associate shall promptly notify Covered Entity if Business Associate intends to materially change its practices regarding the processing of PHI through automated or AI-based systems, and shall not implement any such material change without Covered Entity’s prior written consent to the extent such change would require amendment of this BAA.

9. Audit Report.

Upon request, Business Associate will provide Covered Entity with a copy of its most recent independent HIPAA compliance report (AT-C 315), SOC 2 Type II report, HITRUST certification, or other mutually agreed upon independent, standards-based third-party audit report, subject to reasonable confidentiality obligations. Covered Entity agrees not to re-disclose Business Associate’s audit report.

10. Access to PHI by Individuals.

A. Upon request, Business Associate agrees to furnish Covered Entity with copies of the PHI maintained by Business Associate in a Designated Record Set in the time and manner designated by Covered Entity to enable Covered Entity to respond to an Individual’s request for access to PHI under 45 CFR § 164.524.

B. In the event any Individual or personal representative requests access to the Individual’s PHI directly from Business Associate, Business Associate will, within ten (10) business days, forward that request to Covered Entity. Any disclosure of, or decision not to disclose, the PHI requested by an Individual or personal representative and compliance with the requirements applicable to an Individual’s right to obtain access to PHI shall be the sole responsibility of Covered Entity.

11. Amendment of PHI.

A. Upon request and instruction from Covered Entity, Business Associate will amend PHI or a record about an Individual in a Designated Record Set that is maintained by, or otherwise within the possession of, Business Associate, as directed by Covered Entity in accordance with procedures established by 45 CFR § 164.526. Any request by Covered Entity to amend such information will be completed by Business Associate within fifteen (15) business days of Covered Entity’s request.

B. In the event that any Individual requests that Business Associate amend such Individual's PHI or record in a Designated Record Set, Business Associate will, within ten (10) business days, forward this request to Covered Entity. Any amendment of, or decision not to amend, the PHI or record as requested by an Individual and compliance with the requirements applicable to an Individual's right to request an amendment of PHI will be the sole responsibility of Covered Entity.

12. Accounting of Disclosures.

A. Business Associate will document any disclosures of PHI made by it to account for such disclosures as required by 45 CFR § 164.528(a). Business Associate also will make available information related to such disclosures as would be required for Covered Entity to respond to a request for an accounting of disclosures in accordance with 45 CFR § 164.528. At a minimum, Business Associate will furnish Covered Entity the following with respect to any covered disclosures: (i) the date of disclosure of PHI; (ii) the name of the entity or person who received PHI, and, if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of the disclosure which includes the basis for such disclosure.

B. Business Associate will furnish to Covered Entity information collected in accordance with this Section 12 within ten (10) business days after written request by Covered Entity, to permit Covered Entity to make an accounting of disclosures as required by 45 CFR § 164.528, or in the event that Covered Entity elects to provide an Individual with a list of its business associates, Business Associate will provide an accounting of its disclosures of PHI upon request, to the extent that such accounting is required under the HITECH Act or under HHS regulations adopted in connection with the HITECH Act.

C. In the event an Individual delivers the initial request for an accounting directly to Business Associate, Business Associate will within ten (10) business days forward such request to Covered Entity.

13. Availability of Books and Records.

Business Associate will make available its internal practices, books, agreements, records, and policies and procedures relating to the use and disclosure of PHI, upon request, to the Secretary of HHS for purposes of determining Covered Entity's and Business Associate's compliance with HIPAA and this BAA.

14. Responsibilities of Covered Entity.

With regard to the use and/or disclosure of Protected Health Information by Business Associate, Covered Entity agrees to:

A. Notify Business Associate of any limitation(s) in its notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

B. Notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

C. Notify Business Associate of any restriction to the use or disclosure of PHI 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 PHI.

D. Except for data aggregation or management and administrative activities of Business Associate, not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Covered Entity.

15. Data Ownership.

Business Associate's data stewardship does not confer data ownership rights on Business Associate with respect to any PHI or other data shared with it under the Agreement, including any and all forms thereof. Covered Entity retains all right, title, and interest in and to the PHI. Nothing in this BAA shall be construed to grant Business Associate any ownership interest in the PHI.

16. Term and Termination.

A. This BAA will become effective on the date first written above and will continue in effect until all obligations of the Parties have been met under the Agreement and under this BAA.

B. Covered Entity may terminate this BAA, the Agreement, and any other related agreements if Covered Entity makes a determination that Business Associate has breached a material term of this BAA and Business Associate has failed to cure that material breach, to Covered Entity's reasonable satisfaction, within thirty (30) days after written notice from Covered Entity. Covered Entity may report the problem to the Secretary of HHS if termination is not feasible.

C. If Business Associate determines that Covered Entity has breached a material term of this BAA, then Business Associate will provide Covered Entity with written notice of the existence of the breach and shall provide Covered Entity with thirty (30) days to cure the breach. Covered Entity's failure to cure the breach within the thirty (30)-day period will be grounds for immediate termination of the Agreement and this BAA by Business Associate. Business Associate may report the breach to HHS.

D. Upon termination of the Agreement or this BAA for any reason, all PHI maintained by Business Associate will be returned to Covered Entity or destroyed by Business Associate in accordance with the data return and deletion procedures set forth in the Agreement. Business Associate will not retain any copies of such information, and this obligation applies to PHI in the possession of Business Associate's agents and subcontractors. If return or destruction of the PHI is not feasible, in Business Associate's reasonable judgment, Business Associate will furnish Covered Entity with notification, in writing, of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of the PHI is infeasible, Business Associate will extend the protections of this BAA to such information for as long as Business Associate retains such information and will limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible. The Parties understand that this Section 16(D) will survive any termination of this BAA.

17. Effect of BAA.

A. This BAA is a part of and subject to the terms of the Agreement, except that to the extent any terms of this BAA conflict with any term of the Agreement with respect to the use, disclosure, privacy, security, or breach notification obligations relating to PHI, the terms of this BAA will govern.

B. Except as expressly stated in this BAA or as provided by law, this BAA will not create any rights in favor of any third party.

18. Regulatory References.

A reference in this BAA to a section in HIPAA means the section as in effect or as amended at the time.

19. Notices.

All notices, requests, demands, or other communications to be given under this BAA to a Party will be made via either first class mail, registered or certified mail, express courier, or electronic mail to the Party’s address given below:

A. If to Covered Entity, to: []

B. If to Business Associate, to:

Jeremy Sharp
3500 John F. Kennedy Pkwy, Suite 200, Fort Collins, CO 80525
legal@reverbreports.com

20. Amendments and Waiver.

This BAA may not be modified, nor will any provision be waived or amended, except in writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

21. HITECH Act Compliance.

The Parties acknowledge that the HITECH Act includes significant changes to the Privacy Rule and the Security Rule. Each Party agrees to comply with the applicable provisions of the HITECH Act and any HHS regulations issued with respect to the HITECH Act. The Parties also agree to negotiate in good faith to modify this BAA as reasonably necessary to comply with the HITECH Act and its regulations as they become effective but, in the event that the Parties are unable to reach an agreement on such a modification within sixty (60) days of the date either Party requests such modification in writing, either Party will have the right to terminate this BAA upon thirty (30) days’ prior written notice to the other Party.

In light of the mutual agreement and understanding described above, the Parties execute this BAA as of the date first written above.

Covered Entity:

Date:

Print Name:

Signature:

Title:

Business Associate: Testing Revolution, LLC

Date:

Print Name: Jeremy Sharp

Signature:

Title: Co-owner