

EMERGE AND SEE BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into by and between Emerge and See, LLC, a California limited liability company (“Business Associate”), and the undersigned client (“Client”). Business Associate and Client may be referred to individually as a “Party” and collectively as the “Parties.”

1. PURPOSE AND REGULATORY AUTHORITY

This Agreement is entered into to comply with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), and the implementing regulations at 45 C.F.R. Parts 160 and 164, as amended from time to time.

Client represents and warrants that it is a “Covered Entity” as defined in 45 C.F.R. §160.103, or a Business Associate of a Covered Entity, and that Business Associate is performing services on Client’s behalf that require the creation, receipt, maintenance, or transmission of Protected Health Information.

2. DEFINITIONS

Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in HIPAA, HITECH, and applicable HIPAA regulations, including but not limited to:

- a. Protected Health Information (“PHI”)
- b. Electronic Protected Health Information (“ePHI”)
- c. Breach
- d. Security Incident
- e. Unsecured PHI

3. SCOPE OF SERVICES AND ROLE LIMITATION

Business Associate provides administrative, credentialing, enrollment, billing, data management, repository, and related non-clinical services only.

Business Associate does not provide medical care, behavioral health treatment, clinical services, diagnosis, utilization review, medical decision-making, or maintenance of the designated medical record set.

Client retains sole responsibility for the accuracy, completeness, lawful creation, and maintenance of all medical records, clinical documentation, and patient care information, including behavioral health and specialty-specific records.

4. PERMITTED USES AND DISCLOSURES

Business Associate may use or disclose PHI solely to the extent necessary to:

- a. Perform services for Client as described in the applicable service agreement between the Parties;
- b. Carry out its legal responsibilities as a business associate;
- c. Perform data aggregation, administrative, operational, or management services permitted by law;
- d. Disclose PHI as required by applicable law;
- e. Use PHI for internal management and legal responsibilities, provided that any disclosure outside Business Associate is required by law or made pursuant to written assurances of confidentiality.

All uses and disclosures of PHI shall be limited to the minimum necessary to accomplish the intended purpose in accordance with 45 C.F.R. §164.502(b).

Business Associate shall not use or disclose PHI in any manner not expressly permitted by this Agreement or required by law.

5. SAFEGUARDS AND SECURITY

Business Associate shall:

- a. Implement and maintain appropriate administrative, physical, and technical safeguards designed to protect the confidentiality, integrity, and availability of PHI and ePHI;
- b. Comply with the HIPAA Security Rule, 45 C.F.R. §§164.302–318, as applicable to its role;
- c. Restrict access to PHI to workforce members who have a legitimate need to know;
- d. Maintain written HIPAA compliance policies and procedures.

6. SUBCONTRACTORS

Business Associate shall ensure that any subcontractor, agent, or vendor that creates, receives, maintains, or transmits PHI on its behalf agrees in writing to restrictions, conditions, and safeguards that are no less stringent than those imposed on Business Associate under this Agreement.

7. SUBSTANCE USE DISORDER RECORDS (42 C.F.R. PART 2)

Business Associate does not create, receive, maintain, or transmit patient records subject to 42 C.F.R. Part 2 unless expressly agreed to in writing by the Parties.

To the extent Client provides information subject to 42 C.F.R. Part 2 without such written agreement, Client represents and warrants that it has obtained all required patient consents and authorizations and remains solely responsible for compliance with 42 C.F.R. Part 2.

Nothing in this Agreement shall be construed to impose obligations on Business Associate beyond those required by applicable law.

8. SPECIALLY PROTECTED HEALTH INFORMATION

Client acknowledges that certain categories of PHI may be subject to heightened protections under federal or state law, including but not limited to mental health records, psychotherapy notes, substance use disorder records, HIV/AIDS information, reproductive health information, genetic data, and records relating to minors.

Client is solely responsible for identifying such information, obtaining any required consents or authorizations, and ensuring compliance with all applicable laws governing such data. Business Associate shall have no independent obligation to classify or apply heightened protections unless expressly required by law or agreed to in writing.

9. BREACH AND SECURITY INCIDENT NOTIFICATION

Business Associate shall report to Client, without unreasonable delay and in no event later than ten (10) business days after discovery, any Breach of Unsecured PHI or Security Incident involving PHI.

A Breach shall be deemed discovered in accordance with 45 C.F.R. §164.410(a).

Business Associate shall provide information reasonably requested by Client to support breach assessment, mitigation, notification, and regulatory reporting and shall mitigate harmful effects to the extent practicable.

Business Associate shall not be responsible for Breaches or Security Incidents caused solely by Client, including Client system failures, inaccurate or unlawful data, compromised credentials, Client instructions, or delayed notification to Business Associate.

10. INDIVIDUAL RIGHTS

To the extent required by law and as directed by Client, Business Associate shall:

- a. Make PHI available for access or amendment;
- b. Document disclosures to permit Client to respond to accounting requests;
- c. Promptly forward to Client any individual rights requests received directly by Business Associate.

11. TERMINATION

This Agreement shall terminate automatically upon termination of the underlying service agreement between the Parties.

Client may terminate this Agreement for material breach after providing written notice and a reasonable opportunity to cure.

Business Associate may terminate this Agreement immediately if Client engages in conduct that materially compromises HIPAA compliance or PHI security.

Either Party may terminate this Agreement without cause upon thirty (30) days' written notice.

12. EFFECT OF TERMINATION

Upon termination, Business Associate shall, at Client's direction, return or destroy PHI if feasible.

If return or destruction is infeasible, Business Associate shall continue to protect such PHI and limit further uses and disclosures indefinitely in accordance with this Agreement and applicable law.

13. INDEMNIFICATION

Client shall indemnify, defend, and hold harmless Business Associate and its members, managers, officers, employees, and agents from and against all claims, damages, losses, penalties, fines, costs, and expenses (including reasonable attorneys' fees) arising out of or related to:

- a. Client's breach of this Agreement;
- b. Client's violation of HIPAA or other applicable law;
- c. Inaccurate, incomplete, or unlawful PHI provided by Client;
- d. Client system failures, access controls, or security practices;
- e. Client instructions or actions resulting in a Breach or Security Incident;
- f. Client's failure to comply with laws governing specially protected health information, including 42 C.F.R. Part 2 and applicable state laws.

Business Associate shall indemnify Client only to the extent a claim arises directly from Business Associate's willful misconduct or gross negligence.

14. LIMITATION OF LIABILITY

To the maximum extent permitted by law:

- a. Neither Party shall be liable for indirect, incidental, consequential, special, or punitive damages;
- b. Business Associate's total aggregate liability arising out of or relating to this Agreement shall not exceed the total fees paid to Business Associate under the applicable service agreement during the twelve (12) months preceding the event giving rise to the claim.

These limitations apply regardless of the theory of liability asserted.

15. REGULATORY COOPERATION AND AUDITS

To the extent required by law, Business Associate shall cooperate with Client in responding to regulatory inquiries related to PHI. Any audit or assessment beyond legal requirements shall be subject to reasonable scope, confidentiality protections, and reimbursement of Business Associate's time and costs, unless caused by Business Associate's willful misconduct or gross negligence.

16. ORDER OF PRECEDENCE

In the event of a conflict between this Agreement and any underlying service agreement, this Agreement shall control with respect to PHI and HIPAA compliance obligations.

17. NO THIRD-PARTY BENEFICIARIES

Nothing in this Agreement is intended to confer rights or remedies upon any person or entity other than the Parties.

18. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflict-of-laws principles.

19. AMENDMENT

The Parties agree to amend this Agreement as necessary to comply with changes in applicable federal or state law.

20. SURVIVAL

All provisions relating to PHI protection, confidentiality, indemnification, limitation of liability, and regulatory compliance shall survive termination of this Agreement.

*****SIGNATURE PAGE TO FOLLOW*****

IN WITNESS WHEREOF, the parties acknowledge that they have read this Agreement, they understand it and they agree to be bound by its terms and conditions and have executed this Agreement as of the dates set forth below. The parties further agree that this Agreement is the complete and exclusive statement of the agreement between the parties with respect to the subject matter hereof. Each party and every individual signing this Agreement represents and warrants that they are fully authorized and empowered to enter into this Agreement and perform their respective obligations hereunder.

EMERGE AND SEE, LLC:

CLIENT:

Emerge and See, LLC, a California
Limited Liability Company

Authorized Signature

Authorized Signature

Date

Date

Name and Title:

Name and Title:

Email: