

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement governs the relationship between all Covered Entities (“Covered Entities”) and BirthTracks (the “Business Associate”).

WHEREAS, the U.S. Department of Health and Human Services (the “HHS”) has issued final privacy and security rules under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and final breach notification rules under the Health Information Technology for Economic and Clinical Health Act (“HITECH”); and

WHEREAS, the privacy and security rules seek to protect private health information by imposing standards on “Covered Entities”, a term that is defined to include certain health care providers; and

WHEREAS, a Covered Entity, under the privacy rules, is responsible for ensuring that service providers comply with HIPAA’s privacy and security policies and procedures; and

WHEREAS, a Covered Entity may disclose private health information to BirthTracks only if it obtains satisfactory assurance, through a “BirthTracks Contract”, that the BirthTracks will appropriately safeguard the information; and

WHEREAS, HITECH and the breach notification rules impose certain privacy, security, breach notification requirements directly on BirthTrackss;

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule. In addition, the following terms shall have the following meanings:

1.1 **Breach**. “Breach” means the acquisition, access, use, or disclosure of protected health information in a manner not permitted under HIPAA which compromises the security or privacy of the protected health information.

1.2 **Breach Notification Rule**. “Breach Notification Rule” shall mean the Breach Notification for Unsecured Protected Health Information; Final Rule at 45 C.F.R. Parts 160 and 164.

1.3 Designated Record Set. “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 CFR §164.501.

1.4 Individual. “Individual” shall have the same meaning as the term “individual” in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

1.5 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.

1.6 Protected Health Information. “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR §164.501 or “PHI”, limited to the information created or received by BirthTracks from or on behalf of Covered Entity.

1.7 Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR §164.103.

1.8 Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.

1.9 Security Rule. “Security Rule” shall mean the Health Insurance Reform: Security Standards; Final Rule at 45 C.F.R. parts 160, 162, and 164.

ARTICLE II OBLIGATIONS AND ACTIVITIES OF BIRTHTRACKS

2.1 BirthTracks agrees not to use or disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.

2.2 BirthTracks agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

2.3 BirthTracks agrees to mitigate, to the extent practicable, any harmful effect that is known to BirthTracks of a use or disclosure of Protected Health Information by BirthTracks in violation of the requirements of this Agreement.

2.4 BirthTracks agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.

(a) BirthTracks shall report to an authorized representative of Covered Entity any Breach of which it becomes aware, without unreasonable delay and in no case later than 60 days after discovery, all in accordance with HITECH, the Breach Notification Rule, and 45 C.F.R. § 164.410.

2.5 BirthTracks agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by, BirthTracks on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to BirthTracks with respect to such information.

2.6 To the extent that BirthTracks holds Protected Health Information in a Designated Record Set, BirthTracks agrees to provide access, at the request of Covered Entity, and in such reasonable time and manner as the parties shall agree, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524.

2.7 To the extent that BirthTracks holds Protected Health Information in a Designated Record Set, BirthTracks agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, in such reasonable time and manner as the parties shall agree.

2.8 BirthTracks 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, BirthTracks on behalf of Covered Entity available to the Covered Entity, or to the Secretary, in such reasonable time and manner as the parties shall agree or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

2.9 BirthTracks 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.

2.10 BirthTracks agrees to provide to Covered Entity or an Individual, in such reasonable time and manner as the parties shall agree, information collected in accordance with Section 2.9 above, 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.

2.11 BirthTracks shall have or implement administrative, physical and technical safeguards that reasonably protect the security of PHI, including of ePHI, that it creates, maintains or transmits on behalf of Covered Entity as required by 45 CFR §§ 164.308, 164.310, 164.312, 164.314, and 164.316 and other applicable provisions of HIPAA, HITECH, and the Privacy, Security, and Breach Notification Rules.

2.12 BirthTracks shall comply with, and be directly subject to, HITECH sections 13401 (security provisions), 13402 (breach notification), and 13404 (privacy provisions), along with 45 C.F.R. §§ 164.410 (breach notification), 164.502(e)(2) (business associate agreement), and 164.504(e) (business associate agreement).

ARTICLE III
PERMITTED USES AND DISCLOSURES BY BIRTHTRACKS

3.1 Purpose. Except as otherwise limited in this Agreement, BirthTracks may use or disclose Protected Health Information to perform functions, activities, or services to, for, or on behalf of Covered Entity as described below, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

3.2 Except as otherwise limited in this Agreement, BirthTracks may, if necessary in carrying out his/her or its responsibility for provision of services, use Protected Health Information for the proper management and administration of the BirthTracks or to carry out the legal responsibilities of the BirthTracks.

3.3 Except as otherwise limited in this Agreement, BirthTracks may, if necessary in carrying out his/her or its responsibility for provision of services, disclose Protected Health Information for the proper management and administration of the BirthTracks, provided that disclosures are Required By Law, or BirthTracks 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 BirthTracks of any instances of which it is aware in which the confidentiality of the information has been breached.

3.4 Except as otherwise limited in this Agreement, BirthTracks may, if necessary in carrying out his/her or its responsibility for provision of services, use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B).

3.5 BirthTracks may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

ARTICLE IV
OBLIGATIONS OF COVERED ENTITY

4.1 Covered Entity shall notify BirthTracks of any limitation(s) in the Notice of Privacy Practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect the BirthTracks's use or disclosure of Protected Health Information.

4.2 Covered Entity shall notify BirthTracks 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 BirthTracks's use and disclosure of Protected Health Information.

4.3 Covered Entity shall notify BirthTracks 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 BirthTracks's use or disclosure of Protected Health Information.

ARTICLE V PERMISSIBLE REQUESTS BY COVERED ENTITY

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

ARTICLE VI TERM AND TERMINATION

6.1 Term. The Term of this Agreement shall be effective as of date first mentioned above, and unless terminated earlier as provided below, shall terminate when all of the Protected Health Information provided by Covered Entity to BirthTracks, or created or received by BirthTracks 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 Article.

6.2 Mutual Termination. The parties may mutually agree to terminate this Agreement at any time, provided that any related agreement with BirthTracks is also terminated.

6.3 Termination Without Cause. Either party may terminate this Agreement with no less than 30 days written notice to the other party, provided that any related agreement with BirthTracks is also terminated.

6.4 Termination for Cause. If Covered Entity determines that BirthTracks has violated this Agreement, Covered Entity shall:

- (a) Demand that BirthTracks immediately end the violation and cure the violation within the time specified by Covered Entity; or
- (b) Immediately terminate this Agreement and any other then existing agreements with BirthTracks for services; or
- (c) If neither termination nor cure are feasible, report the violation to the Secretary.

6.5 Effect of Termination. Except as provided in Section 6.5(a) below, upon termination of this Agreement for any reason BirthTracks shall return or destroy all Protected Health Information received from Covered Entity, or created or received by BirthTracks on

behalf of Covered Entity. This provision shall also apply to Protected Health Information in the possession of subcontractors or agents of BirthTracks. BirthTracks shall retain no copies of the Protected Health Information.

(a) In the event that returning or destroying the Protected Health Information is infeasible, BirthTracks shall provide to Covered Entity written notification of the reasons that make return or destruction infeasible, and provide a detailed written accounting of all such PHI. If return or destruction of Protected Health Information is infeasible, BirthTracks shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those necessary and lawful purposes that make the return or destruction infeasible, for so long as BirthTracks maintains such Protected Health Information.

ARTICLE VII INDEMNIFICATION

7.1 Indemnification by Covered Entity. Covered Entity hereby agrees to indemnify, defend, and hold harmless the BirthTracks and any employee or agent of the BirthTracks (each of the foregoing being referred to individually as “Indemnified Party” in this paragraph) against all liability to third parties (other than liability occasioned by the fault of Indemnified Party) arising from the performance of BirthTracks’s obligations under this Agreement or on account of the Covered Entity’s breach of this Agreement. Covered Entity shall on demand reimburse any Indemnified Party for any and all such liability, fine, penalty, cost, or expense (including reasonable attorney’s fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding, or demand by any third party arising within the scope of this indemnification provision. Covered Entity’s obligation to indemnify any Indemnified Party will survive the expiration or termination of this Agreement by either party for any reason.

7.2 Indemnification by BirthTracks. BirthTracks hereby agrees to indemnify, defend, and hold harmless the Covered Entity and any of its employees or agents (each of the foregoing being referred to individually as “Indemnified Party” in this paragraph) for any damages incurred and against all liability to third parties arising from BirthTracks’s negligence or misconduct in the performance of its obligations under this Agreement or on account of BirthTracks’s breach of this Agreement. BirthTracks shall on demand reimburse any Indemnified Party for any and all such damages or liability, fine, penalty, cost, or expense (including reasonable attorney’s fees) which may for any reason be suffered by or imposed upon any Indemnified Party whether by reason of any suit, claim, action, proceeding, or demand by any third party or otherwise. BirthTracks’s obligation to indemnify any Indemnified Party will survive the expiration or termination of this Agreement by either party for any reason.

**ARTICLE VIII
MISCELLANEOUS**

8.1 Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

8.2 Amendment. The parties agree to take such action as is necessary to amend this Agreement 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, Public Law No. 104-191.

8.3 Survival. The respective rights and obligations of BirthTracks under Article VI of this Agreement shall survive the termination of this Agreement.

8.4 Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered entity to comply with the Privacy Rule.

**ARTICLE IX
EXECUTION**

In witness whereof, the parties have executed this BA Agreement, effective

COVERED ENTITY:

By: _____
Title: _____
Date: _____
Address:

BUSINESS ASSOCIATE:

By: Colin Walsh
Title: President
Date:

Address: 13 Park Ter, Mill Valley CA 94941

