

## Tidepool Project

### Business Associate Agreement

This Business Associate Agreement is hereby incorporated by reference into the Tidepool Project (“Tidepool”) Terms of Use (the “Services Agreement”) as of the date that the User that is a HIPAA “covered entity” commences to use the Tidepool Apps (the “Effective Date”).

Applicability and Definitions. This Business Associate Agreement shall apply only if and to the extent that (a) Contracting Party is a “covered entity” or a “business associate” (as defined in the HIPAA Rules); and (b) Tidepool, pursuant to the Services Agreement, creates, receives, maintains, or transmits “protected health information” or “PHI” (as defined below) in the performance of a function, activity, or service for or on behalf of Contracting Party for a function or activity regulated by the HIPAA Rules, and thus acts as a “business associate” (as defined in the HIPAA Rules). The fact that Contracting Party and Tidepool have entered into this Business Associate Agreement shall be not interpreted to indicate or provide that either of them has determined or agreed that Contracting Party is a “covered entity” or “business associate” or that Tidepool is to act a “business associate” pursuant to the Services Agreement.

The term “HIPAA Rules” means the regulations promulgated by the U.S. Department of Health & Human Services under the Health Insurance Portability and Accountability Act of 1996 at 45 C.F.R. Parts 160, 162, and 164, as in effect from time to time, and the provisions of the Health Information Technology for Economic and Clinical Health (“HITECH”) Act relating to the privacy of health information (Division A, Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009 (“ARRA”) (Pub. L. 111-5)). All terms used in this Business Associate Agreement not specifically defined otherwise shall have the same definitions as given to them in the HIPAA Rules; provided, however, that the term “PHI” shall refer only to protected health information in any form or medium that (a) Tidepool creates, receives, maintains or transmits for or on behalf of Contracting Party in Contracting Party’s capacity as a “covered entity” or “business associate” (as defined in the HIPAA Rules) and (b) is held by or subject to the control of Tidepool or a subcontractor of Tidepool.

#### 2. Permitted Uses and Disclosures of PHI.

Performance of Tidepool’s Services. Tidepool may use or disclose PHI as necessary and appropriate to perform its services for or on behalf of Contracting Party pursuant to the Services Agreement.

Tidepool’s Administration and Management. Tidepool may use and disclose PHI as necessary for the proper management and administration of Tidepool or to carry out Tidepool’s legal responsibilities; provided, that for any such disclosure Tidepool shall obtain reasonable assurances from the recipient of the PHI that (i) the recipient will hold the PHI confidentially and will use or disclose the PHI only as required by law or for the purpose for which it was disclosed to the recipient, and (ii) the recipient will notify Tidepool of any instances of which it is aware in which the confidentiality of the information has been breached.

#### 3. Obligations of Tidepool.

Limitations on Uses and Disclosures. Tidepool shall use or disclose PHI only as permitted by this Business Associate Agreement or as required by law; provided, that Tidepool shall not, except as expressly permitted by this Business Associate Agreement, use or disclose PHI in a manner that would violate the requirements of the HIPAA Rule if done by Contracting Party.

Safeguards. Tidepool shall use reasonable and appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Business Associate Agreement and, with respect to electronic PHI, in compliance with the requirements of Subpart C of 45 C.F.R. Part 164.

Reporting.

Reporting of Impermissible or Unauthorized Uses and Disclosures. Tidepool shall report to Contracting Party any use or disclosure of PHI made by Tidepool or a subcontractor of Tidepool not permitted by this Business Associate Agreement of which Tidepool becomes aware.

Reporting of Security Incidents. Without limiting Section 3.3.3 (Reporting of Breaches), Tidepool shall report to Contracting Party on no less than a quarterly basis any security incidents involving PHI of which Tidepool becomes aware in which there is a successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system that compromises the confidentiality, integrity, or availability of PHI. Notice is hereby deemed provided, and no further notice shall be provided, for any other security incidents, including unsuccessful attempts at such unauthorized access, use, disclosure, modification, or destruction, such as pings and other broadcast attacks on a firewall, denial of service attacks, port scans, unsuccessful login attempts, or interception of encrypted information where the key is not compromised, or any combination of the above.

Reporting of Breaches. Tidepool shall report to Contracting Party any breach of unsecured PHI as required by 45 C.F.R. § 164.410. Tidepool shall make such report to Contracting Party without unreasonable delay, and in no case later than 60 calendar days after Tidepool's discovery of such breach.

Subcontractors. Tidepool shall require that any subcontractor that creates, receives, maintains, or transmits PHI on behalf of Tidepool agrees to the same restrictions and conditions at least as stringent as those found in this Business Associate Agreement, and agrees to implement reasonable and appropriate safeguards to protect PHI.

Access to PHI. Tidepool shall within a reasonable period of time make PHI in a designated record set available to Contracting Party as required for Contracting Party's compliance with 45 C.F.R. § 164.524.

Amendment to PHI. Tidepool shall within a reasonable period of time make PHI in a designated record set available to Contracting Party for amendment and incorporate any amendments to the PHI as may reasonably be requested by Contracting Party in accordance with 45 C.F.R. § 164.526.

Accounting of Disclosures. Tidepool shall within a reasonable period of time make available to Contracting Party the information required to provide an accounting, in accordance with 45 C.F.R. § 164.528, of disclosures made by Tidepool or a subcontractor of Tidepool, if requested by Contracting Party.

Internal Records. Tidepool shall make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of the U.S. Department of Health and Human Services ("HHS") for purposes of determining Contracting Party's compliance with the HIPAA Rules. Nothing in this section shall waive any applicable privilege or protection, including with respect to trade secrets and confidential commercial information.

3.9. Other Obligations. To the extent that Tidepool is, pursuant to the Services Agreement or this Business Associate Agreement, responsible to carry out an obligation of Contracting Party under the HIPAA Rules, Tidepool shall comply with the requirements of the HIPAA Rules that apply to Contracting Party in the performance of that obligation.

4. Obligations of Contracting Party.

Necessary Consents. Contracting Party hereby represents and warrants to Tidepool that Contracting Party has obtained, or arranged to have obtained, any necessary authorizations, consents, and other permissions that may be required under applicable law for the permitted creation, receipt, maintenance, transmission, use, or disclosure of PHI by Tidepool or a subcontractor of Tidepool.

Restrictions on Disclosures. Contracting Party hereby represents and warrants that neither Contracting Party nor any other party has agreed to any restriction request with respect to, or has placed any restrictions upon, the use or disclosure of PHI that would cause Tidepool or a subcontractor of Tidepool to violate any the HIPAA Rules or this Business Associate Agreement.

Compliance with HIPAA. Contracting Party shall not request or cause Tidepool to make a use or disclosure of PHI that does not comply with the HIPAA Rules or this Business Associate Agreement.

5. Term and Termination.

Term. The term of this Business Associate Agreement shall commence on the Effective Date and shall remain in effect until the termination of the Services Agreement.

Termination. Either Tidepool or Contracting Party may terminate this Business Associate Agreement for any reason upon 90 days prior written notice to the other party. A material breach of this Business Associate Agreement shall be treated as a material breach of the Services Agreement. Without limiting the generality of the foregoing, if Tidepool is in material breach of its obligations under this Business Associate Agreement, and does not cure that breach within the period of time specified for the cure of material breaches in the Services Agreement, Contracting Party may by written notice to Tidepool terminate this Business Associate Agreement and the Services Agreement.

Effect of Termination. Upon any termination of this Business Associate Agreement, Tidepool shall, if feasible, return or destroy all PHI that Tidepool or a subcontractor of Tidepool maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of this Business Associate Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. Contracting Party hereby acknowledges that it is not feasible for Tidepool to destroy or return PHI upon termination of this Business Associate Agreement.

No Agency Relationship. Nothing in this Business Associate Agreement or the Services Agreement is intended to make either Tidepool or Contracting Party an agent of the other. Nothing in this Business Associate Agreement or the Services Agreement is intended to confer upon Contracting Party any right or authority to control Tidepool's conduct pursuant to this Business Associate Agreement or the Services Agreement.

Entire Agreement; Conflict. Except as amended by this Business Associate Agreement, the Services Agreement shall remain in full force and effect. This Business Associate Agreement, together with the Services Agreement as so amended: (a) is intended by the parties as a final, complete and exclusive expression of the terms of their agreement; and (b) supersedes all prior agreements and understandings (whether oral or a written) between the parties with respect to the subject matter hereof. If there is a conflict between the Services Agreement and this Business Associate Agreement with respect to Tidepool's compliance with the HIPAA Rules, this Business Associate Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Business Associate Agreement as of the Effective Date.

Contracting Party:	Tidepool Project
By:	By:
Name:	Name:
Title:	Title:
Date signed:	Date signed: