

BUSINESS ASSOCIATE AGREEMENT

This Agreement is entered into between the Effingham County Board of Commissioners health and wellness program (the "Covered Entity") and ZomoHealth, LLC ("Business Associate").

Whereas, Business Associate has been retained by the Covered Entity as its wellness program provider and will perform certain services on behalf of the Covered Entity with respect to activities of the Covered Entity as a "group health plan" as defined in 45 C.F.R. § 160.103.

Whereas, in connection with the provision of such services by Business Associate, the Covered Entity may disclose to Business Associate certain Protected Health Information (as defined below), concerning the Covered Entity and its activities.

Whereas, Business Associate and the Covered Entity desire to enter into a business associate agreement for the purpose of addressing the Privacy Rule, the Security Rule, and the Electronic Transaction Rule, (as those terms are defined below), and for addressing the privacy and security provisions set forth in the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), contained in Title XIII, Subtitle D, of the American Recovery and Reinvestment Act of 2009.

Therefore, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Business Associate and the Covered Entity agree as follows:

ARTICLE 1. DEFINITIONS

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

- 1.1. "*Agreement*" shall mean this document, including all exhibits, attachments, and properly executed amendments and addendums.
- 1.2. "*Business Associate*" shall generally have the same meaning as the term "business associate at 45 C.F.R. § 160.103, and in reference to the party to this agreement, shall mean ZomoHealth, LLC.
- 1.3. "*Breach*" shall have the same meaning as the term "breach" in 45 C.F.R.

§ 164.402.

- 1.4 “*Covered Entity*” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. § 160.103, and in reference to the party to this agreement, shall mean Effingham County Board of Commissioners.
- 1.5 “*Electronic Health Record*” shall have the same meaning as the term “electronic health record” in § 13400(5) of the American Recovery and Reinvestment Act of 2009.
- 1.6 “*Electronic Protected Health Information*” shall have the same meaning as the term “electronic protected health information” in 45 C.F.R. § 160.103.
- 1.7 “*Electronic Transaction Rule*” shall mean the final regulations issued by the U.S. Department of Health and Human Services concerning standard transactions and code sets under 45 C.F.R. Parts 160 and 162.
- 1.8 “*Individual*” shall mean the person who is the subject of the Protected Health Information or a person who qualifies as the personal representative of the individual in accordance with 45 C.F.R. § 164.502(g).
- 1.9 “*Privacy Rule*” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- 1.10 “*Protected Health Information*” shall mean any information that: (a) relates to the past, present, or future physical or mental health or condition of an Individual; (b) the provision of health care to an Individual; (c) or the past, present, or future payment for the provision of health care to an Individual; and that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual.
- 1.11 “*Required By Law*” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.
- 1.12 “*Secretary*” shall mean the Secretary of the Department of Health and Human Services (“HHS”) and any other officer or employee of HHS to whom authority has been delegated.
- 1.13 “*Security Incident*” shall have the same meaning as the term “security incident” in 45 C.F.R. § 164.304.
- 1.14 “*Security Rule*” shall mean the Security Standards and Implementation Specifications at 45 C.F.R. Parts 160 and 164, Subparts A and C.

- 1.15 “*Transaction*” shall have the same meaning as the term “transaction” in 45 C.F.R. § 160.103.
- 1.16 “*Unsecured Protected Health Information*” shall have the same meaning as the term “unsecured protected health information” in 45 C.F.R. § 164.402.

ARTICLE 2. SAFEGUARDING PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION

- 2.1 Permitted Uses and Disclosures. Business Associate hereby agrees that to the extent it is to carry out one or more of Covered Entity’s obligations under Subpart E of 45 C.F.R. Part 164, it will comply with the requirements of Subpart E that apply to Covered Entity in the performance of those obligations.

Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth below or as required by law.

- a. **Functions and Activities on Covered Entity’s Behalf.** Except as otherwise set forth in this Agreement, the parties hereby agree that Business Associate shall be permitted to use and/or disclose Protected Health Information provided or made available by the Covered Entity (or another business associate of the Covered Entity) only for the purpose of conducting the transactions contemplated under this Agreement and only for purposes within the scope of Business Associate’s representation of the Covered Entity.
- b. **Business Operations.** Business Associate is permitted to use and/or disclose Protected Health Information if necessary for the proper management and administration of Business Associate’s representation of the Covered Entity, or to carry out any legal responsibilities of Business Associate, provided that, with respect to any disclosure of Protected Health Information, either:
- (1) the disclosure is Required By Law; or
 - (2) Business Associate obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that: (a) the Protected Health Information will be held in confidence and used or further disclosed only as for the purposes for which Business Associate disclosed the

Protected Health Information to the person or as Required by Law; (b) the person will use appropriate safeguards to prevent use or disclosure of the Protected Health Information; and (c) the person immediately notifies Business Associate of any instance of which it is aware in which the confidentiality of the Protected Health Information has been breached.

- c. **Data Aggregation Services.** Business Associate is permitted to use or disclose Protected Health Information to provide data aggregation services, as that term is defined by 45 C.F.R. § 164.501, relating to health care operations of the Covered Entity.
- d. **Minimum Necessary.** Business Associate will, in its performance of the functions, activities, services, and operations specified above, make reasonable efforts to use, to disclose, and to request only the minimum amount of Covered Entity's Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure or request consistent with Covered Entity's minimum necessary policies and procedures. Business Associate will not be obligated to comply with this minimum-necessary limitation if neither Business Associate nor Covered Entity is required to limit its use, disclosure or request to the minimum necessary. Business Associate and Covered Entity acknowledge that the phrase "minimum necessary" shall be interpreted in accordance with the HITECH Act.
- e. **De-identification.** Business Associate and/or its subcontractors are authorized to de-identify protected health information in accordance with the applicable requirements under 45 C.F.R. § 164.514(a) and (b).

2.2 Information Safeguards.

- a. **Privacy of Covered Entity's Protected Health Information.** Business Associate will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of Covered Entity's Protected Health Information. The safeguards must reasonably protect Covered Entity's Protected Health Information from any intentional or unintentional use or disclosure in violation of the Privacy Rule and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Agreement.
- b. **Security of Covered Entity's Electronic Protected Health Information.** Business Associate will develop, implement, maintain,

and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on Covered Entity's behalf as required by the Security Rule.

- 2.3 Subcontractors and Agents. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate will ensure that any subcontractors or agents that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.
- 2.4 Prohibition on Sale of Records. As of the effective date specified by HHS in final regulations to be issued on this topic, Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an Individual unless the Covered Entity or Business Associate obtains from the Individual, in accordance with 45 C.F.R. § 164.508, a valid authorization that includes a specification of whether the Protected Health Information can be further exchanged for remuneration by the entity receiving Protected Health Information of that Individual, except as otherwise allowed under the HITECH Act.
- 2.5 Penalties For Noncompliance. Business Associate acknowledges that it is directly liable under the HIPAA Rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of protected health information that are not authorized by its contract or required by law. Business associate is also directly liable and subject to civil penalties for failing to safeguard electronic protected health information in accordance with the HIPAA Security Rule.

ARTICLE 3. COMPLIANCE WITH ELECTRONIC TRANSACTION RULE

If Business Associate conducts in whole or part electronic Transactions on behalf of Covered Entity for which HHS has established standards, Business Associate will comply, and will require any subcontractor or agent it involves with the conduct of such Transactions to comply, with each applicable requirement of the Electronic Transaction Rule. Business Associate shall also comply with the National Provider Identifier requirements, if and to the extent applicable.

ARTICLE 4. INDIVIDUAL RIGHTS

- 4.1 **Access.** Business Associate will make available to Covered Entity or, at Covered Entity's direction, to an Individual (or the Individual's personal representative) for inspection and obtaining copies Covered Entity's Protected Health Information about the Individual that is in Business Associate's custody or control, so that Covered Entity may meet its access obligations under 45 C.F.R. § 164.524. Effective as of the date specified by HHS, if the Protected Health Information is held in an Electronic Health Record, then the Individual shall have a right to obtain from Business Associate a copy of such information in an electronic format. Business Associate shall provide such a copy to Covered Entity or, alternatively, to the Individual directly, if such alternative choice is clearly, conspicuously, and specifically made by the Individual or Covered Entity.
- 4.2 **Amendment.** Business Associate will, upon receipt of written notice from Covered Entity, promptly amend or permit Covered Entity access to amend any portion of Covered Entity's Protected Health Information, so that Covered Entity may meet its amendment obligations under 45 C.F.R. § 164.526.
- 4.3 **Disclosure Accounting.** To allow Covered Entity to meet its disclosure accounting obligations under 45 C.F.R. § 164.528:
- a. **Disclosures Subject to Accounting.** Business Associate will record the information specified below ("Disclosure Information") for each disclosure of Covered Entity's Protected Health Information, not excepted from disclosure accounting as specified below, that Business Associate makes to Covered Entity or to a third party.
 - b. **Disclosures Not Subject to Accounting.** Business Associate will not be obligated to record Disclosure Information or otherwise account for disclosures of Covered Entity's Protected Health Information if Covered Entity need not account for such disclosures.
 - c. **Disclosure Information.** With respect to any disclosure by Business Associate of Covered Entity's Protected Health Information that is not excepted from disclosure accounting, Business Associate will record the following Disclosure Information as applicable to the type of accountable disclosure made:
 - (1) **Disclosure Information Generally.** Except for repetitive disclosures of Covered Entity's Protected Health Information as specified below, the Disclosure Information that Business Associate must record for each accountable disclosure is (i) the disclosure date, (ii) the name and (if known) address of

the entity to which Business Associate made the disclosure, (iii) a brief description of Covered Entity's Protected Health Information disclosed, and (iv) a brief statement of the purpose of the disclosure.

(2) **Disclosure Information for Repetitive Disclosures.** For repetitive disclosures of Covered Entity's Protected Health Information that Business Associate makes for a single purpose to the same person or entity (including Covered Entity), the Disclosure Information that Business Associate must record is either the Disclosure Information specified above for each accountable disclosure, or (i) the Disclosure Information specified above for the first of the repetitive accountable disclosures; (ii) the frequency, periodicity, or number of the repetitive accountable disclosures; and (iii) the date of the last of the repetitive accountable disclosures.

d. **Availability of Disclosure Information.** Business Associate will maintain the Disclosure Information for at least 6 years following the date of the accountable disclosure to which the Disclosure Information relates (3 years for disclosures related to an Electronic Health Record, starting with the date specified by HHS). Business Associate will make the Disclosure Information available to Covered Entity within 15 calendar days following Covered Entity's request for such Disclosure Information to comply with an Individual's request for disclosure accounting. Effective as of the date specified by HHS, with respect to disclosures related to an Electronic Health Record, Business Associate shall provide the accounting directly to an Individual making such a disclosure request, if a direct response is requested by the Individual.

4.4 **Restriction Agreements and Confidential Communications.** Business Associate will comply with any agreement that Covered Entity makes that either (i) restricts use or disclosure of Covered Entity's Protected Health Information pursuant to 45 C.F.R. § 164.522(a), or (ii) requires confidential communication about Covered Entity's Protected Health Information pursuant to 45 C.F.R. § 164.522(b), provided that Covered Entity notifies Business Associate in writing of the restriction or confidential communication obligations that Business Associate must follow. Covered Entity will promptly notify Business Associate in writing of the termination of any such restriction agreement or confidential communication requirement and, with respect to termination of any such restriction agreement, instruct Business Associate whether any of Covered Entity's Protected Health Information will remain subject to the terms of the restriction agreement. Effective February 17, 2010 (or such other date specified as the effective date by HHS), Business Associate will comply

with any restriction request if: (i) except as otherwise Required by Law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and (ii) the Protected Health Information pertains solely to a health care item or service for which the health care provider involved has been paid out-of-pocket in full.

ARTICLE 5. BREACHES

- 5.1 **Privacy or Security Breach.** Business Associate will report to Covered Entity any use or disclosure of Covered Entity's Protected Health Information not permitted by this Agreement along with any Breach of Covered Entity's Unsecured Protected Health Information. Business Associate will treat the Breach as being discovered in accordance with 45 CFR §164.410. Business Associate will make the report to the Covered Entity not more than 15 calendar days after Business Associate learns of such non-permitted use or disclosure. If a delay is requested by a law-enforcement official in accordance with 45 CFR §164.412, Business Associate may delay notifying Covered Entity for the applicable time period. Business Associate's report will at least:
- a. Identify the nature of the Breach or other non-permitted use or disclosure, which will include a brief description of what happened, including the date of any Breach and the date of the discovery of any Breach;
 - b. Identify Covered Entity's Protected Health Information that was subject to the non-permitted use or disclosure or Breach (such as whether full name, social security number, date of birth, home address, account number or other information were involved) on an individual basis;
 - c. Identify who made the non-permitted use or disclosure and who received the non-permitted disclosure;
 - d. Identify what corrective or investigational action Business Associate took or will take to prevent further non-permitted uses or disclosures, to mitigate harmful effects and to protect against any further Breaches;
 - e. Identify what steps the Individuals who were subject to a Breach should take to protect themselves;
 - f. Provide such other information, including a written report, as Covered Entity may reasonably request.

- 5.2 **Security Incidents.** Business Associate will report to Covered Entity any attempted or successful (A) unauthorized access, use, disclosure, modification, or destruction of Covered Entity's Electronic Protected Health Information or (B) interference with Business Associate's system operations in Business Associate's information systems, of which Business Associate becomes aware. Business Associate will make this report once per month, except if any such Security Incident resulted in a disclosure not permitted by this Agreement or Breach of Covered Entity's Unsecured Protected Health Information, Business Associate will make the report in accordance with the provisions set forth in Section 5.1.

ARTICLE 6. TERM AND TERMINATION

- 6.1 Term. This Agreement shall be effective on the date that Business Associate's services to the Covered Entity commence and shall terminate when all Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate 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 section.
- 6.2 Right to Terminate for Cause. Covered Entity may terminate Agreement if it determines, in its sole discretion, that Business Associate has breached any provision of this Agreement, and upon written notice to Business Associate of the Breach, Business Associate fails to cure the Breach within 30 calendar days after receipt of the notice. Any such termination will be effective immediately or at such other date specified in Covered Entity's notice of termination.
- 6.3 Return or Destruction of Covered Entity's Protected Health Information as Feasible. Upon termination or other conclusion of Agreement, Business Associate agrees to return all Protected Health Information received from the Covered Entity, or created or received by Business Associate on behalf of the Covered Entity, and not to retain any copies of the Protected Health Information after termination of this Agreement, if feasible in the reasonable opinion of Business Associate. If Business Associate elects to destroy the Protected Health Information, it shall certify to the Covered Entity that the Protected Health Information has been destroyed. Business Associate shall also obtain or ensure the destruction of Protected Health Information created, received, or maintained by Subcontractors or agents.
- 6.4 Continuing Privacy and Security Obligation. If return or destruction of the Protected Health Information is not feasible, Business Associate agrees to extend the protections of this Agreement for as long as necessary to

protect the Protected Health Information and to limit any further use or disclosure so as to be consistent with the intent of this Agreement.

- 6.5 Need for retaining Protected Health Information for Certain Purposes. If Business Associate needs to retain Protected Health Information for its own management and administration, or to carry out its legal responsibilities, the following shall apply.

Upon termination of this Agreement for any reason, business associate, with respect to protected health information received from covered entity, or created, maintained, or received by business associate on behalf of covered entity, shall:

1. Retain only that protected health information which is necessary for business associate to continue its proper management and administration or to carry out its legal responsibilities;

2. Return to covered entity [or, if agreed to by covered entity, destroy] the remaining protected health information that the business associate still maintains in any form;

3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information;

4. Not use or disclose the protected health information retained by business associate other than for the purposes for which such protected health information was retained and subject to the same conditions set forth in the Agreement which applied prior to termination; and

5. Return to covered entity [or, if agreed to by covered entity, destroy] the protected health information retained by business associate when it is no longer needed by business associate for its proper management and administration or to carry out its legal responsibilities.

- 6.6 Survival of Obligations. The obligations of Business Associate shall survive termination of this Agreement.

ARTICLE 7. GENERAL PROVISIONS

- 7.1 Access to Books and Records. Business Associate hereby agrees to make its internal practices, books and records relating to the use, disclosure, and safeguards for Protected Health Information received from, or created or received by Business Associate on behalf of the Covered Entity, available to the Secretary or the Secretary's designee for purposes of determining compliance with the Privacy Rule and/or the Security Rule.
- 7.2 Mitigation Procedures. Business Associate agrees to have procedures in place for mitigating, to the extent practicable, any deleterious effect from the use or disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of the Covered Entity, in a manner contrary to this Agreement or the Privacy Rule.
- 7.3 Amendment to Agreement. Upon the compliance date of any final regulation or amendment to final regulation promulgated by HHS that affects Business Associate or Covered Entity's obligations under this Agreement, this Agreement will be automatically amended such that the obligations imposed on Business Associate or Covered Entity remain in compliance with the final regulation or amendment to final regulation.
- 7.4 Choice of Law. Except to the extent superseded by the federal law, this Agreement shall be governed by the law of the State of Texas; provided, however, that for the purposes of privacy rights of Individuals, the law of the state in which the Individual resided during the event(s) giving rise to the need to determine the rights under this Agreement shall apply.
- 7.5 Disputes. Any controversy or claim arising out of or relating to the Agreement will be finally settled by compulsory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA").
- 7.6 Injunctive Relief. Notwithstanding any rights or remedies provided for in this Agreement, the Covered Entity retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of Protected Health Information by Business Associate or any agent, contractor, or third party that received Protected Health Information from Business Associate.
- 7.7 Notices. Whenever under this Agreement one party is required to give notice to the other, such notice shall be deemed given if mailed by First Class United States mail, postage prepaid, and addressed as follows:

Covered Entity:

**Effingham County Board of Commissioners
804 S. Laurel Street
Springfield, GA 31329**

Business Associate:

**ZomoHealth, LLC
1700 Post Oak Boulevard, Suite
600 Houston, TX 77056**

- 7.8 Binding Nature and Assignment. This Agreement shall be binding on Business Associate and the Covered Entity and their successors and assigns, but neither Business Associate nor the Covered Entity may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.
- 7.9 Headings. The headings in this Agreement are for reference and convenience only, and shall not enter into the interpretation of this Agreement.
- 7.10 Force Majeure. Business Associate shall be excused from performance under this Agreement for any period Business Associate is prevented from performing any services pursuant hereto, in whole or in part, as a result of an act of God, war, civil disturbance, court order, labor dispute or other cause beyond its reasonable control, and such non-performance shall not be grounds for termination.
- 7.11 Attorney's Fees. Except as otherwise specified in this Agreement, if any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of this Agreement, each party shall bear their own legal expenses and the other costs incurred in that action or proceeding.
- 7.12 Entire Agreement. This Agreement constitutes the entire agreement between the parties and shall replace any previous business associate agreement between the parties. There are no understandings or agreements relating to this Agreement which are not fully expressed in this Agreement and no change, waiver, or discharge of any obligation(s) arising under this Agreement shall be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced.

IN WITNESS WHEREOF, Business Associate and the Covered Entity have caused this Agreement to be signed and delivered by their duly authorized representatives as of the date set forth above.

Effingham County Board of Commissioners

By: _____

Print Name: _____

Title: _____

Date: _____

ZomoHealth, LLC

By: _____

Print Name: _____

Title: _____

Date: _____