



HIPAA Business Associate Agreement

This agreement ("Agreement") is entered into between Action Verb LLC ("AV"), and the undersigned ("Customer").

WHEREAS, AV provides an online file storage and transfer service called BrickFTP;

WHEREAS, Customer is a "Covered Entity" or "Business Associate" as defined in and subject to the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164 ("HIPAA Rules") and wishes to utilize the BrickFTP service provided by AV;

WHEREAS, As a service provider to Customer as described above, AV may be considered a "Business Associate" of Customer as defined in the HIPAA Rules.

NOW, THEREFORE, Customer and AV agree as follows:

1. Definitions. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Disclosure, Individual, Protected Health Information ("PHI"), Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
2. Obligations and Activities of Customer. As a Covered Entity or Business Associate, Customer agrees to:
 - (a) Not provide AV with PHI by any means other than through normal operation of the BrickFTP service (such as via email, postal mail, or telephone);
 - (b) Not request that AV use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Customer;
 - (c) Ensure that the "metadata" stored on BrickFTP, such as file names and folder names (but not file contents), does not contain any PHI;
 - (d) Configure BrickFTP for maximum security settings according to the maximum security instructions on BrickFTP's support website and set a backup retention period of thirty (30) days or less;
 - (e) Comply with all HIPAA Rules and applicable laws with respect to all uses of the BrickFTP service; and,
 - (f) Apply encryption in accordance with the Secretary's Guidance to Render Unsecured Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals (without furnishing any encryption keys to AV) to files containing PHI before storing or transferring such files on BrickFTP.

Customer Initial: _____

3. Obligations and Activities of AV. As a potential Business Associate, AV agrees to:

- (a) Not Use or Disclose PHI other than as permitted to provide the BrickFTP service or as Required By Law;
- (b) 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 PHI other than as provided for by this Agreement;
- (c) Report to Customer any Use or Disclosure of PHI not otherwise agreed to of which it becomes aware, including Breaches of Unsecured PHI as required at 45 CFR 164.410, and any Security Incident of which it becomes aware;
- (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of AV agree to the same restrictions, conditions, and requirements that apply to AV with respect to such information; and,
- (e) Make its internal practices, books, and records directly relating to the Use and Disclosure of PHI available to the Secretary to the extent necessary for determining compliance with the HIPAA Rules.

4. BrickFTP Limitations.

(a) BrickFTP is a generic online file server service and was not explicitly designed for storing or working with PHI. Customer must ensure that its use of BrickFTP is consistent with the HIPAA Rules.

(b) Customer's encryption as well as other security protocols will prevent AV from fully accessing and knowing the nature of the PHI contained in Customer's data on BrickFTP. Accordingly, Customer is solely and completely responsible for complying with the requirements set forth in 45 CFR Part 164 that require access to PHI. This includes, but is not limited to 45 CFR Part 164.524 (for record set access), 45 CFR Part 164.526 (for incorporating amendments), and 45 CFR Part 164.528 (for accounting disclosures). Further, it will not be possible for AV to provide information about the identities of the Individuals who may be affected or a description of the type of information that may have been subject to a Security Incident, Impermissible Use or Disclosure, or Breach.

5. Term and Termination.

(a) The term of this Agreement will be effective when executed by both parties, and will terminate when Customer cancels their BrickFTP account or AV terminates Customer's BrickFTP account, which Customer or AV are free to do at any time.

(b) Upon termination of this Agreement for any reason, AV shall within seven (7) business days destroy all PHI, if any, received from Customer, or created, maintained, or received by AV on behalf of Customer, that AV still maintains in any form. AV shall retain no copies of any of Customer's PHI. Notwithstanding the foregoing, in the event that AV determines that destroying the PHI is infeasible upon termination, AV shall provide to Customer notification of the condition that makes return or destruction infeasible.

6. Additional Provisions.

(a) By reference, this Agreement incorporates, but does not supersede or replace, the Terms of Service, Privacy Policy, or any other document governing the BrickFTP service.

(b) The parties agree that from time to time the terms of this Agreement may need to be updated to reflect changes in the HIPAA Rules or other applicable law.

(c) Nothing in this Agreement shall be deemed to confer any third party rights or benefits.

(d) Customer will not assign this Agreement, in whole or in part.

(e) Neither party will be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay is caused by events or circumstances beyond the other party's reasonable control, including an act of force majeure.

(f) If any term of this Agreement is found to be unenforceable or contrary to law, it will be modified to the least extent necessary to make it enforceable, and the remaining portions of this Agreement will remain in full force and effect. Any material ambiguity shall be resolved in favor of a meaning to comply with applicable regulations.

IN WITNESS WHEREOF, the parties have executed this Agreement and agree to be bound by the terms herein.

Action Verb LLC

Customer: _____

Signature: _____

Signature: _____

Print: _____

Print: _____

Date: _____

Date: _____