

Business Associate Agreement

Privacy This Business Associate Agreement (“BAA”) is entered into by and between [NAME] (“Covered Entity”) and Mail Technologies, Inc. (“Business Associate”), as of [DATE] (the “Effective Date”) pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”).

1. PREAMBLE AND DEFINITIONS.

1.1 Covered Entity intends to, or is, utilizing Business Associate’s document mailing services known as DocuSend (the “Service”). Covered Entity acknowledges that once Business Associate has completed the mailing of a document, Business Associate does not intend to maintain any PHI relating to that document.

1.2 The term “HIPAA Rules” as used in this BAA means the privacy, security, breach notification, and enforcement rules at 45 C.F.R. Part 160 and Part 164. A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended.

1.3 Unless the context clearly indicates otherwise, the following terms in this BAA shall have the same meaning as those terms in the HIPAA Rules: Breach, Designated Record Set, disclosure, Electronic Protected Health Information (ePHI), individual, Protected Health Information (PHI), Required By Law, Secretary, Security Incident, Subcontractor, Unsecured PHI, and use.

1.4 A reference in this BAA to the Privacy Rule means the Privacy Rule, in conformity with the regulations at 45 C.F.R. Parts 160-164 (the “Privacy Rule”) as interpreted under applicable regulations and guidance of general application published by HHS, including all amendments thereto for which compliance is required, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (the “HITECH Act”), the American Recovery and Reinvestment Act of 2009 (“ARRA”), and the HIPAA Rules.

2. GENERAL OBLIGATIONS OF BUSINESS ASSOCIATE.

2.1 Business Associate agrees not to use or disclose PHI, other than as permitted or required by this BAA or as Required By Law.

2.2 Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to ePHI, to prevent use or disclosure of PHI other than as provided for by the BAA.

2.3 Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for in this BAA of which it becomes aware, including any Breach of Unsecured PHI of which it becomes aware, and any Security Incident of which it becomes aware, within forty-five (45) calendar days of “discovery” within the meaning of the HITECH Act. The Parties agree that notice is deemed given for attempted but unsuccessful Security Incidents involving trivial and routine incidents such as routine scans or “pings”

that do not pass Business Associate's firewall, or unsuccessful log-on attempts, and no further notice of such unsuccessful Security Incidents need be given, provided that no such incident results in unauthorized access, use or disclosure of PHI.

2.4 Business Associate agrees, in accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to require that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information, including compliance with the applicable requirements of Subpart C of 45 C.F.R. Part 164 .

2.5 Business Associate agrees to make available PHI then maintained by Business Associate in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524.

2.6 Business Associate agrees to make available PHI then maintained by Business Associate for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526.

2.7 Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528.

2.8 Business Associate agrees to make its internal practices, books, and records, including policies and procedures regarding PHI, relating to the use and disclosure of PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary for the purpose of determining compliance with the Privacy Rule.

2.9 To the extent that Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

3.1 Business Associate may receive, create, use, or disclose PHI in connection with its performance of the Services for Covered Entity.

3.2 Business Associate may use or disclose PHI as Required By Law.

3.3 Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

3.4 Business Associate may disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate if: (a) the disclosure is required by law; or (b)(1) Business Associate

obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person; and (2) the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

3.5 Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by the Covered Entity, except as set forth in Sections 3.3 and 3.4.

4. OBLIGATIONS OF COVERED ENTITY.

4.1 Except as set forth in Section 4.2, Covered Entity shall not agree to any restrictions on the use or disclosure of PHI that adversely affect Business Associate's ability to perform the Services.

4.2 In the event Covered Entity agrees to any restrictions on the use or disclosure of PHI that materially affect Business Associate's ability to perform the Services, Covered Entity shall immediately notify Business Associate of such restrictions. In such event, Business Associate may, at its option, either: (a) cease providing the Services; or (b) require Covered Entity to reimburse Business Associate for any additional costs associated with the additional restrictions.

4.3 Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy and Security Rule if done by Covered Entity.

5. LIMITATION OF LIABILITY.

5.1 Business Associate shall have no liability to Covered Entity in connection with this Agreement for any indirect, consequential, incidental, exemplary, or punitive damages, or for any loss of revenues, lost profits, or lost income.

6. TERM AND TERMINATION.

6.1 This BAA shall be in effect as of the Effective Date, and shall terminate on the earlier of the date that:

(a) Either party terminates for cause as authorized under Section 6.2.

(b) All of the PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity. If it is not feasible to return or destroy PHI, protections are extended in accordance with Section 6.3.

6.2 Upon either party's knowledge of material breach by the other party, the non-breaching party shall provide an opportunity for the breaching party to cure the breach or end the violation; or terminate the BAA. If the breaching party does not cure the breach or

end the violation within a reasonable timeframe not to exceed thirty (30) days from the notification of the breach, or if a material term of the BAA has been breached and a cure is not possible, the non-breaching party may terminate this BAA and the Covered Entity's utilization of the Services, upon written notice to the other party.

6.3 Upon termination of this BAA for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

- (a) Retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities.
- (b) Destroy the remaining PHI that the Business Associate still maintains in any form.
- (c) Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to ePHI to prevent use or disclosure of the PHI, other than as provided for in this Section 6, for as long as Business Associate retains the PHI.
- (d) Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at Sections 3.3 and 3.4 above which applied prior to termination.
- (e) Destroy the PHI 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.

6.4 The obligations of Business Associate under this Section 6 shall survive the termination of this BAA.

7. MISCELLANEOUS.

7.1 The parties agree to take such action as is necessary to amend this BAA to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA, ARRA, the HITECH Act, the HIPAA Rules, and any other applicable law.

7.2 The respective rights and obligations of Business Associate under Section 5 and Section 6 of this BAA shall survive the termination of this BAA.

7.3 This BAA shall be interpreted in the following manner:

- (a) Any ambiguity shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules.
- (b) Any inconsistency between the BAA's provisions and the HIPAA Rules, including all amendments, as interpreted by the HHS, a court, or another

regulatory agency with authority over the Parties, shall be interpreted according to the interpretation of the HHS, the court, or the regulatory agency.

(c) Any provision of this BAA that differs from those required by the HIPAA Rules, but is nonetheless permitted by the HIPAA Rules, shall be adhered to as stated in this BAA.

7.4 The parties agree that the terms of this Agreement shall apply only to themselves and are not for the benefit of any third parties.

7.5 This BAA constitutes the entire agreement between the parties related to the subject matter of this BAA. This BAA supersedes all prior negotiations, discussions, representations, or proposals, whether oral or written. This BAA may not be modified unless done so in writing and signed by a duly authorized representative of both parties. If any provision of this BAA, or part thereof, is found to be invalid, the remaining provisions shall remain in effect.

7.6 This BAA may be executed in two or more counterparts, each of which shall be deemed an original.

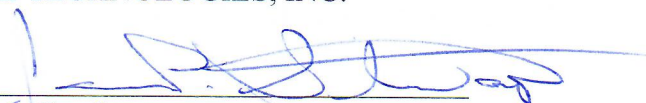
7.7 Except to the extent preempted by federal law, this BAA shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of laws provisions.

IN WITNESS WHEREOF, the parties hereto have executed this BAA as of the date first above written.

[COVERED ENTITY]

By: _____
Name:
Title:

MAIL TECHNOLOGIES, INC.

By: 
Name: Jim Stewart
Title: CEO