

# BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), is entered into as of the effective date set forth on the Signature Page of this Agreement (the “Effective Date”) between the Covered Entity and Telemerge, Inc. dba SimpleVisit with an address of 2144 Priest Bridge Ct., Suite 5, Crofton, MD 21114 (“Business Associate”) (each a “Party” and collectively the “Parties”).

## RECITALS

The Parties have entered into a prior agreement for professional services (the “Underlying Agreement”). Performance of the Underlying Agreement may involve Protected Health Information (“PHI”) (as defined in 45 C.F.R. § 164.501) that is subject to the federal privacy and security regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the regulations promulgated thereunder by the United States Department of Health and Human Services (“HHS”), codified at 45 CFR Parts 160 and 164 (commonly known as the Privacy and Security Rules), (collectively referred to herein as the “HIPAA Rules”). The purpose of this Agreement is to set forth the obligations of the Parties with respect to such PHI.

In consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

### I. Definitions.

A. Protected Health Information or PHI. “Protected Health Information” or “PHI” shall have the same meaning as the term “Protected Health Information” in 45 C.F.R. §160.103, limited to the information created or received by Business Associate on behalf of or from Covered Entity. PHI will include PHI in electronic form (“Electronic PHI”) unless specifically stated otherwise.

B. Terms used but not otherwise defined in this Agreement shall have the same meaning as given to those terms in the Health Information Portability and Accountability Act of 1996, as codified at 42 U.S.C. §1320d (“HIPAA”), the Health Information Technology Act of 2009, as codified at 42 U.S.C.A. prec. §17901 (“HITECH”), and any current and future regulations promulgated under either HIPAA or HITECH.

### II. Business Associate’s Obligations.

A. Relationship of Parties. In providing these services, Business Associate will be acting as an independent contractor and not as an employee or agent of Covered Entity. Covered Entity shall have no authority, express or implied, to commit or obligate Business Associate in any manner whatsoever.

B. No Permitted Use or Disclosure of PHI. Business Associate shall not use or disclose PHI other than as permitted or required by the Agreement or as required by law.

C. Safeguards. Business Associate shall use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement.

D. Notice to Covered Entity: Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for in the Agreement, any Security Incident involving electronic PHI, and

any Breach of Unsecured PHI as required at 45 CFR 164.410. Such report shall be provided promptly and without unreasonable delay, but no later than 60 days after Business Associate first learns of the unauthorized use or disclosure, Security Incident or Breach.

E. Subcontractors. Business Associate agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI 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, in accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2).

F. Access to PHI. To the extent that Business Associate possesses an applicable Designated Record Set, and within a reasonable amount of time of receipt of a request from Covered Entity or Individual to access such PHI, Business Associate shall make available such PHI, to the extent required for Covered Entity's compliance with its obligations under 45 C.F.R. §164.524.

G. Amendment of PHI. To the extent that Business Associate possesses an applicable Designated Record Set, and within a reasonable amount of time of receipt of a request from Covered Entity or Individual, Business Associate shall make any amendment(s) to such PHI as directed or agreed to by the Covered Entity pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR § 164.526

H. Accounting. Business Associate shall document and make available such disclosures of PHI as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528.

I. Compliance with Covered Entity Obligations. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

J. Availability of Compliance Records. Business Associate shall make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules. Business Associate shall also promptly provide Covered Entity with a copy of any PHI that Business Associate provides pursuant to any governmental inquiry.

K. Mitigation. Business Associate shall mitigate, to the extent practicable and at its cost, any harmful effects from any use or disclosure of PHI by Business Associate not permitted by this Agreement, regardless of Business Associate's fault or negligence. All such efforts shall be subject to the Covered Entity's prior written approval.

L. Prohibition on Certain Uses and Disclosures. Business Associate shall not use or disclose PHI for any purpose other than as specifically permitted by this Agreement. Specifically, but without limitation, Business Associate shall not use or disclose PHI for fundraising or marketing purposes, and shall not directly or indirectly receive remuneration in exchange for PHI (which does not affect payment from Covered Entity for Business Associate's services).

### III. Permitted Use and Disclosure of PHI.

A. Business Associate may only use or disclose PHI as necessary to perform its obligations and functions under the Underlying Agreement, or as required by law.

B. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth below:

1. For the proper management and administration of Business Associate or to carry out its legal responsibilities;
2. For the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and will be used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

#### IV. Term and Termination.

A. Term. This Agreement shall become effective on the date of execution of the Underlying Agreement, and shall terminate at the time of the termination or expiration of all Underlying Agreements.

B. Termination for Cause. If Covered Entity reasonably determines that Business Associate has materially breached this Agreement, Covered Entity shall:

1. Provide Business Associate with 10 days written notice of the alleged material breach and an opportunity to cure the breach, immediately after which time this Agreement and the Underlying Agreement shall be automatically terminated if the breach is not cured; or
2. Immediately terminate this Agreement and the Underlying Agreement if cure is not possible; or
3. Report the violation to the Secretary if neither termination nor cure is feasible.

C. Termination for Change in Law. If a change in law causes the performance of the Agreement to violate the law, Business Associate and/or Covered Entity shall terminate this Agreement if cure is not possible.

D. Effect of Termination. Upon termination or expiration of this Agreement, Business Associate shall, at Covered Entity's option, return to Covered Entity or destroy all PHI in Business Associate's possession. Business Associate shall not retain any copies of the PHI, unless the retention of PHI is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

#### V. Miscellaneous.

A. Amendments. The Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representative of the Parties. The Parties shall amend this Agreement from time to time as is necessary to achieve and maintain compliance with the requirements of the HIPAA Rules and any other applicable law.

B. Interpretation. Any ambiguity in this Agreement shall be resolved to permit the Parties to comply with the requirements of the HIPAA Rules and any other applicable law.

C. Choice of Law. This Agreement shall be governed by the laws of the State of Maryland without regard to conflict of laws principles thereof.

D. Audits, Inspection and Enforcement. Upon request and with reasonable prior notice by Covered Entity, Business Associate and its agents shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of PHI pursuant to this Agreement or for the purpose of determining whether Business Associate is in compliance with its obligations under this Agreement.

E. Relationship to Agreements with Covered Entity. In the event that a provision of this Agreement is contrary to a provision of any agreement with Covered Entity pertaining to Business Associate's services, the provisions of this Agreement shall control.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the \_\_\_\_\_.

Telemerge, Inc.  
dba SimpleVisit  
2144 Priest Bridge Court  
Crofton, Maryland 21114

Covered Entity:

Name \_\_\_\_\_

Name \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_



