

CloudPAT: Business Associate Details & Agreement

Dear Customer,

Thank you for choosing CloudPAT as your HIPAA-compliant, web-based platform of choice for your WatchPAT sleep studies. In order to create an account for you and your office, we will need you to fill in the following tables as well as sign a Business Associate Details & Agreement dealing with the handling and protection of Protected Health Information. You may simply fill in the fields and send a copy of the tables back to us via email for expedited service. Fields with an asterisk (*) are mandatory. Default values are boldfaced.

If you have any questions, please contact our main office at 1-800-206-6952 and ask for CloudPAT support.

Itamar-Medical Inc.





HIPAA BUSINESS ASSOCIATE AGREEMENT

This Agreement (“Agreement”) is made and entered into this [Day] day of [Month], [Year] (“Effective Date”) by and between Itamar-Medical Inc. (“Business Associate”), whose business address is 3290 Cumberland Club Dr. Suite 100 Atlanta, GA 30339, and [Business Name] (“Covered Entity”), whose business address is [Address of Covered Entity].

WHEREAS, Covered Entity will make available and/or transfer to Business Associate certain Information, in conjunction with goods or services that are being provided by Business Associate to Covered Entity, that is confidential and must be afforded special treatment and protection.

WHEREAS, Business Associate will have access to and/or receive from Covered Entity certain Information that can be used or disclosed only in accordance with this Contract and the United States Department of Health and Human Services (“HHS”) Privacy Regulations.

NOW, THEREFORE, Covered Entity and Business Associate agree as follows:

1. **Definitions.** The following terms shall have the meaning ascribed to them in this Section. Other capitalized terms not defined herein shall have the meaning set forth in HIPAA.
 - a. **Contract** shall refer to this HIPAA Business Associate Agreement.
 - b. **Business Associate** shall mean **Itamar-Medical Ltd.**, the organization receiving the Information.
 - c. **Covered Entity** shall mean the covered entity specified above, the organization providing/making available the Information.
 - d. **HHS Privacy Regulations** shall mean the Code of Federal Regulations (“C.F.R.”) at Title 45, Part 160 and Subparts A and E of Part 164.
 - e. **HIPAA** shall mean the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act, and their implementing regulations and rules.
 - f. **Individual** shall mean the person who is the subject of the Information, and has the same meaning as the term “individual” as defined by 45 C.F.R. 160.103.
 - g. **Information** shall mean any “protected health information” provided and/or made available by Covered Entity to Business Associate, or created by Business Associate on behalf of Covered Entity, and has the same meaning as the term “protected health information” as defined by 45 C.F.R. 160.103.
 - h. **Parties** shall mean Business Associate and Covered Entity.
 - i. **Secretary** shall mean the Secretary of the Department of Health and Human Services (“HHS”) and any other officer or employee of HHS to whom the authority involved has been delegated.
2. **Term.** The term of this Contract shall commence as of the Effective Date specified above, and shall expire when all of the Information provided by Covered Entity to Business Associate is destroyed or returned to Covered Entity pursuant to **Section 17**.
3. **Limits On Use And Disclosure Established By Terms Of Contract.** Business Associate hereby agrees that it shall be prohibited from using or disclosing the Information for any purpose other than as expressly permitted or required by this Contract. (Ref. 164.504(e)(2)(i)).
4. **Stated Purposes For Which Business Associate May Use Or Disclose Information.** The Parties hereby agree that Business Associate shall be permitted to use and/or disclose Information for the following stated purposes:

Subject to the Covered Entity providing the necessary data and supporting documentation to the Business Associate on a timely basis, Business Associate shall provide certain billing and collection services to Covered Entity. These services shall include: preparing HCFA-1500 claim forms for third party payors; requesting reimbursement from third party payors; providing monthly detailed reports of gross charges, gross collections, gross write-offs and allowances and aged accounts receivable listings; producing and mailing collection letters; maintaining and producing patient account records, providing monthly detailed reports of an accounting by patient revenue codes, including identifying all co-insurance and deductibles outstanding and including copies of all remittance advice and forms as Covered Entity requires for the performance of services thereunder. Notwithstanding the preceding, Business Associate shall not have the authority or the responsibility for initiating any litigation to enforce collection of Covered Entity’s accounts receivable. (Ref. 164.504(e)(2)(i); 65 Fed. Reg. 82505.)
5. **Additional Purposes For Which Business Associate May Use Or Disclose Information.** In addition to the Stated Purposes for which Business Associate may use or disclose Information described in **Section 4**, Business Associate may use or disclose Information provided or made available from Covered Entity for those purposes allowed in HIPAA.
6. **Use of Information For Management, Administration and Legal Responsibilities.** Business Associate is permitted to use Information if necessary for the proper management and administration of Business Associate or to carry out legal responsibilities of Business Associate. (Ref. 164.504(e)(4)(i)(A-B)).
7. **Disclosure of Information For Management, Administration and Legal Responsibilities.** Business Associate is permitted to disclose Information for the proper management and administration of Business Associate or to carry out legal responsibilities of Business Associate, provided:
 - a. The disclosure is required by law; or
 - b. The 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, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person

immediately notifies the Business Associate of any instance of which it is aware in which the confidentiality of the information has been breached. (Ref. 164.504(e)(4)(ii)).

8. **Data Aggregation Services.** Business Associate is also permitted to use or disclose Information to provide data aggregation services, as that term is defined by 45 C.F.R. 164.501, relating to the health care operations of Covered Entity. (Ref. 164.504(e)(2)(i)(B)).
9. **Limits On Use And Further Disclosure Established By Contract And Law.** Business Associate hereby agrees that the Information shall not be further used or disclosed other than as permitted or required by the Contract or as required by law. (Ref. 45 C.F.R. 164.504(e)(2)(ii)(A)).
10. **Appropriate Safeguards.** Business Associate will establish and maintain appropriate safeguards to prevent any use or disclosure of the Information, other than as provided for by this Contract. Business Associate will comply with the applicable requirements of Subpart C of 45 CFR Part 164 relating to the security standards for the protection of electronic PHI. To the extent Business Associate is to carry out Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with the requirements of that Subpart that apply to Covered Entity in the performance of such obligations. (Ref. 164.504(e)(2)(ii)(B), 164.504(e)(2)(ii)(H)).
11. **Reports Of Improper Use Or Disclosure.** Business Associate hereby agrees that it shall report to Covered Entity within ten (10) business days of discovery any use or disclosure of Information not provided for or allowed by this Contract, including Security Incidents and Breaches of Unsecured Protected Health Information as required by 45 C.F.R. § 164.410. (Ref. 164.504(e)(2)(ii)(C)).
12. **Subcontractors.** In accordance with 45 C.F.R. §§ 164.308(b)(2) and 164.502(e)(1)(ii), Business Associate hereby agrees that if Information is provided or made available to any Subcontractors, Business Associate must enter into a subcontract with the Subcontractor that contains substantially the same terms, conditions and restrictions on the use and disclosure of Information as contained in this Contract. (Ref. 164.504(e)(2)(ii)(D)).
13. **Right of Access to Information.** Business Associate hereby agrees to make Information it holds in a Designated Record Set available to Covered Entity and Individuals in accordance with, and as required by, 45 C.F.R. 164.524, in a timely and reasonable manner. (Ref. 164.504(e)(2)(ii)(E)).
14. **Amendment and Incorporation of Amendments.** If and when requested by Covered Entity or Individuals, Business Associate agrees to incorporate amendments to Information it holds in a Designated Record Set in accordance with, and as required by, 45 C.F.R. 164.526, in a timely and reasonable manner. (ref.164.504(e)(2)(ii)(F)).
15. **Provide Accounting.** Business Associate agrees to maintain such information as would be required to make an accounting of Business Associate's disclosures of Information under 45 C.F.R. 164.528 for six (6) years from the date of Business Associate's disclosure. Business Associate shall provide Individuals and Covered Entity with such information as is necessary to make an accounting of Business Associate's disclosures of Information in accordance with, and as required by, 45 C.F.R. 164.528, in a timely and reasonable manner. (Ref. 164.504(e)(2)(ii)(G)).
16. **Access to Books and Records.** Business Associate hereby agrees to make its internal practices, books, and records relating to the use or disclosure of 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 Covered Entity's compliance with the HHS Privacy Regulations. (Ref. 164.504(e)(2)(ii)(I)).
17. **Return or Destruction of Information.** At termination of this Contract, Business Associate hereby agrees to return or destroy all Information received from, or created or received by Business Associate on behalf of Covered Entity. Business Associate agrees not to retain any copies of the Information after termination of this Contract. If return or destruction of the Information is not feasible, Business Associate agrees to extend the protections of this Contract for as long as necessary to protect the Information and to limit any further use or disclosure to those purposes that make the return or destruction of the Information infeasible. If Business Associate elects to destroy the Information, it shall certify to Covered Entity that the Information has been destroyed. (Ref. 164.504(e)(2)(ii)(J)).
18. **Covered Entity Obligations.** Covered Entity shall:
 - a. Immediately notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Information.
 - b. Immediately notify Business Associate of any changes in, or revocation of, the permission by an Individual to use or disclose his or her Information, to the extent that such changes may affect Business Associate's use or disclosure of Information.
 - c. Immediately notify Business Associate of any restriction on the use or disclosure of Information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Information.
 - d. Not request Business Associate to use or disclose Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity, except for uses or disclosures of Information for data aggregation and the management and administration and legal responsibilities of Business Associate as set forth herein.
19. **Mitigation Procedures.** Business Associate agrees to have procedures in place for mitigating, to the maximum extent practicable, any deleterious effect from the use or disclosure of Information in a manner contrary to this Contract or the HHS Privacy Regulations. (Ref. 164.530(f)).
20. **Sanction Procedures.** Business Associate agrees and understands that it must develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Agreement or the HHS Privacy Regulations. (Ref. 164.530(e)(1)).
21. **Property Rights.** The Information shall be and remain the property of Covered Entity. Business Associate agrees that it acquires no title or rights to the Information, including any de-identified information, as a result of this Contract.
22. **Termination of Contract.** Business Associate agrees that Covered Entity has the right to immediately terminate this Contract and seek relief under the Disputes Article if Covered Entity reasonably determines that Business Associate has violated a material term of



this Contract. (Ref. 164.504(e)(2)(iii). If the Agreement cannot be adequately performed after this Contract has been terminated, termination of this Contract shall also operate as termination of the Agreement.

- 23. **Grounds For Breach.** Any non-compliance by either Party with this Contract or the HHS Privacy Regulations will automatically be considered to be grounds for breach, if the other Party knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-compliance.
- 24. **Governing Law; Disputes.** This Agreement shall be governed by and construed in accordance with the laws of the state of Georgia, USA. The competent courts and tribunals situated in Atlanta, Georgia shall have sole and exclusive jurisdiction in any dispute or controversy arising out of or relating to this Agreement.
- 25. **Injunctive Relief.** Notwithstanding any rights or remedies provided for in this Contract, Covered Entity retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of Information by Business Associate or any agent, contractor or third party that received Information from Business Associate.

- 26. **Binding Nature and Assignment.** This Contract shall be binding on the Parties hereto and their successors and assigns, but neither Party may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.
- 27. **Notices.** All notices or communications required or permitted pursuant to the terms of this Agreement will be in writing and shall be delivered in person or by means of certified or registered mail or messenger to a party at its address as set forth below, or to such other person or address as a party may specify by similar notice to the other party hereto or by telecopy with a hard copy sent by mail on or before the next business day. All such notices shall be deemed given upon delivery if delivered by hand, on the third business day after deposit with the U.S. Postal Service, and on the first business day after sending by telecopy to the Covered Entity at the address for the Covered Entity set forth below and to the Business Associate at the address for the Business Associate set forth below.

APPROVED AND ACCEPTED BY:

Itamar-Medical Inc.

Print name

Title: _____

Date: _____

Signature for Covered Entity

Print name

Title: _____

Date: _____