



HIPAA Business Associate Subcontractor Agreement (for Resellers)

This Business Associate Subcontractor Agreement is entered into between Intronis, Inc. and the reseller signing below (**Reseller**)

Background: Intronis will provide certain back-up and recovery services (**Services**) to Reseller allowing Reseller to market Intronis' product to customers. Certain customers of Reseller may be Covered Entities or Business Associates (as defined by the HIPAA Rules) making Reseller a Business Associate regarding those customers. It is possible that Intronis may create, receive, maintain, or transmit Electronic Protected Health Information on behalf of a Reseller who is a Business Associate making Intronis a Business Associate with regard to such Electronic Protected Health Information. The parties agree that not all information received or maintained by Intronis will be PHI or EPHI subject to the HIPAA Rules. The parties agree that this agreement is only applicable regarding information that is received, maintained or created by Intronis on behalf of a Covered Entity or a Business Associate as defined by the HIPAA Rules and is PHI or EPHI as defined above, but that any information not protected by this agreement will be protected by confidentiality provisions in the applicable underlying agreement for Services between the parties. With respect to any Electronic Protected Health Information that Intronis creates, receives, maintains or transmits on behalf of a Business Associate, Intronis and Reseller agree to the following:

1. DEFINITIONS.

- a. **Electronic Protected Health Information (EPHI)** has the meaning in the HIPAA Security Rule at 42 CFR 160.103 (because EPHI is a subset of PHI, all references to Protected Health Information or PHI in this agreement include EPHI if applicable). For purposes of this agreement, Electronic Protected Health Information means only that information that Business Associate has the ability to access.
- b. **Protected Health Information (PHI)** has the meaning as defined by the HIPAA Privacy Rule at 42 CFR 160.101 et. seq.
- c. **HIPAA Rules** has the meaning in the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR Part 160 and Part 164.

Terms used (but not otherwise defined) in this agreement, have the meanings of those terms in the HIPAA Rules.

2. OBLIGATIONS AND ACTIVITIES OF INTRONIS.

- a. Intronis agrees to:
 - Not use or further disclose Protected Health Information other than as permitted or required to provide Services to Reseller or on behalf of Reseller to Reseller's customer, or as Required By Law;
 - Use reasonable and appropriate safeguards with regard to Protected Health Information, and comply with Subpart C of 45 CFR Part 164 (the HIPAA Security Rule) with respect to Electronic Protected Health Information, to prevent use or disclosure of the Protected Health Information other than as necessary to provide services to Reseller;
 - Mitigate, to the extent practicable, any harmful effect that is known to Intronis of a use or disclosure of Protected Health Information by Intronis in violation of the requirements of this agreement;
 - Report to Reseller any use or disclosure of Protected Health Information not provided for by this agreement of which it becomes aware, including any Breaches of Unsecured Protected Health Information in accordance with the HIPAA Rules;
 - In accordance with 45 CFR 164.502(e)(1)(ii) and §164.308(b)(2) to ensure that any individual or entity that subcontracts with Intronis to create, receive, maintain or transmit Protected Health Information or Electronic Protected Health Information, on behalf of Intronis, agrees to the same restrictions and conditions that apply to Intronis pursuant to the HIPAA Rules and this agreement; and
 - Make internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Reseller or at the request of the Secretary to the Secretary, within a reasonable time of such request for purposes of the Secretary determining Reseller's or a Covered Entity's compliance with the Privacy Rule.
- b. If Intronis is required to make a disclosure of information because of a legal requirement, it will track such a disclosure and will provide information to the Reseller as necessary for Reseller to provide such information to a customer who is a Covered Entity or Business Associate, in order to allow a Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- c. Intronis will make available any information in a Designated Record Set to the Reseller or a Covered Entity or Individual if so instructed by Reseller in order to allow a Covered Entity to comply with 45 CFR §164.524.
- d. Intronis will make amendments to Protected Health Information in a Designated Record Set upon request of a Reseller as necessary to allow a Covered Entity to comply with 45 CFR §164.526, but only to the extent that Intronis is in possession of the only copy of a Designated Record Set.
- e. It is the policy of Intronis that it will make reasonable efforts to limit uses or disclosures of Protected Health Information to the minimum necessary to accomplish the intended purpose.
- f. Intronis will comply with any restrictions on the use or disclosure of Protected Health Information which have been agreed to by a Covered Entity and which have been communicated to Intronis by Reseller.

3. PERMITTED USES AND DISCLOSURES BY INTRONIS.

- a. Except as otherwise limited in this agreement, Intronis may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Reseller as requested by Reseller provided that such use or disclosure would not violate the Privacy Rule if performed by Reseller or a Covered Entity for which Reseller provides services.

- b. Except as otherwise limited in this agreement, Intronis may disclose Protected Health Information for the proper management and administration of Intronis or to carry out the legal responsibilities of Intronis, provided that disclosures are required by law, or Intronis obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Intronis of any instances of which it is aware in which the confidentiality of the information has been breached.
- c. Intronis may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

4. OBLIGATIONS OF RESELLER

- a. Reseller will provide Intronis with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Intronis' permitted or required uses and disclosures.
- b. Reseller must notify Intronis of any restriction to the use or disclosure of Protected Health Information that a Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Intronis' use or disclosure of Protected Health Information.

5. PERMISSIBLE REQUESTS BY RESELLER

Except as otherwise permitted by this agreement, Reseller may not request Intronis to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Reseller or by a Covered Entity.

6. TERM AND TERMINATION

- a. Term. The Term of this agreement is effective as of the date signed by the parties.
- b. Termination. Reseller may terminate this agreement if covered entity determines that Intronis has violated a material term of this agreement and Intronis has been notified of the alleged breach and has not cured the breach within 10 days. Notwithstanding the above, the termination of this agreement will not terminate or extinguish any obligations in an underlying agreement between the parties for Services. Moreover, this agreement will automatically terminate concurrent with the date of termination of the underlying agreement between the parties to which this agreement is related.
- c. Continued Safeguard of Information. Intronis will immediately begin the process of destruction of any PHI or EPHI upon termination of this agreement unless Intronis has a business reason which makes the destruction of the EPHI infeasible. In such circumstances Intronis may continue to maintain the EPHI for up to 30 days, continuing to safeguard the information as set forth in this agreement and limiting the use or disclosure of the PHI or EPHI to that which made the destruction infeasible. If Intronis has a legitimate business need to maintain the PHI or EPHI for more than 30 days, Intronis will notify Reseller in writing of the reasons that return or destruction is infeasible, in which case the use or disclosure of the information will be limited to uses and disclosures directly related to those purposes that make the return or destruction of the information infeasible. This provision will survive termination of this agreement. When the information is no longer needed by Intronis, the information will be destroyed or returned.

7. MISCELLANEOUS

- a. No Third Party Beneficiary Rights. Nothing express or implied in this agreement is intended to give, nor does anything herein give any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.
- b. Regulatory References. A reference in this agreement to a section in the HIPAA Rules means the section as in effect or as amended, and for which compliance is required.
- c. Interpretation. Any ambiguity in this agreement will be resolved in favor of a meaning that permits Reseller to comply with the HIPAA Rules.
- d. Applicability of HIPAA. The use of terms defined by the HIPAA Rules throughout this agreement, including use of the term Business Associate will not be construed as an admission that Intronis or Reseller is subject to the HIPAA Rules with regard to any specific information. Consistent with Paragraph 2 above, the parties agree the obligations and responsibilities set forth in this agreement are only applicable with respect to information that is received, maintained or created by Intronis on behalf of a Covered Entity or a Business Associate as defined by the HIPAA Rules and is PHI or EPHI as defined by the HIPAA Rules.

Intronis, Inc.

Reseller

By: Rob Merklinger

By: _____

Name: Rob Merklinger

Name: _____

Title: VP of Sales

Title: _____

Date: _____

Date: _____