

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "BAA") to that certain **emocha License Agreement, dba Scene** dated [DATE] (the "Services Agreement") is entered into by and between The Sauk County Health Department, a _____ ("Covered Entity") and Scene, a Delaware corporation, ("Business Associate"), and will be made effective as of June 1, 2025 _____ (the "Effective Date"). Covered Entity and Business Associate are referred to herein collectively as the "Parties" and may be referred to individually as a "Party."

WHEREAS, the purpose of this BAA is to assure the privacy and security of Protected Health Information ("PHI") and Electronic Protected Health Information ("EPHI") (each as defined below) of the Covered Entity in accordance with the regulations (including, but not limited to, the "Privacy Rule" (45 C.F.R. Part 160, subpart A and C, and Part 164, subparts A and E), the "Security Rule" (45 C.F.R. Part 160, subpart A and C, and Part 164, subparts A and C), the "Breach Notification Rule" (45 C.F.R. Part 160, Subparts A and C, and 45 C.F.R. Subpart D), the "Enforcement Rule" (45 C.F.R. Part 160, Subparts C and D); and the "Electronic Transaction Rule" (45 C.F.R. Parts 160 and 162) issued by the U.S. Department of Health and Human Services ("DHHS") pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the American Recovery and Reinvestment Act, including the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), all such laws and regulations as may be amended from time to time. The Privacy Rule, the Security Rule, the Breach Notification Rule, the Enforcement Rule, and the Electronic Transaction Rule are collectively referred to as the "HIPAA Rules";

WHEREAS, HIPAA provides, among other things, that a covered entity is permitted to disclose and allow access to PHI and EPHI to a business associate, and to allow the business associate to obtain and receive PHI, if the covered entity obtains satisfactory assurances in the form of a written contract that the business associate will comply with all applicable HIPAA Rules;

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

1. **Definitions.** Terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in the HIPAA Rules, including, but not limited to the following:

1.1 "Breach" shall have the meaning set forth in 45 C.F.R. Section 164.402.

1.2 "Data Aggregation" shall have the meaning set forth in 45 C.F.R. Section 164.501.

1.3 "Designated Record Set" shall have the meaning set forth in 45 C.F.R. Section 164.501.

1.4 "Electronic Protected Health Information" or "EPHI" shall have the meaning set forth in 45 C.F.R. Section 160.103. Electronic Protected Health Information is a subset of Protected Health Information.

1.5 "Electronic Transactions" shall be as described in 45 C.F.R. Section 162.

1.6 "Genetic information" shall have the meaning set forth in 45 C.F.R. Section 160.103.

1.7 "Individual" shall have the meaning set forth in 45 C.F.R. Section 160.103 and shall include a person who qualifies as the Individual's personal representative in accordance with 45 C.F.R. Section 164.502(g).

1.8 "Limited Data Set" shall have the meaning set forth in 45 C.F.R. Section 164.514(e)(2).

1.9 "Protected Health Information" or "PHI" shall have the meaning set forth 45 C.F.R. Section 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of the Covered Entity. EPHI is included in the definition of PHI. Genetic Information shall be considered PHI.

1.10 "Required By Law" shall have the meaning set forth in 45 C.F.R. Section 164.103.

1.11 "Secretary" shall mean the Secretary of the Department of Health and Human Services ("DHHS") or his or her designee.

1.12 "Security Incident" shall have the meaning set forth in 45 C.F.R. Section 164.304.

1.13 "Standard Transactions" have the meaning set forth in 45 C.F.R. Section 162.103.

1.14 "Subcontractor" shall mean a person or entity to whom the Business Associate has delegated a function, activity, or service pursuant to the Services Agreement, as described in Section 2 below.

1.15 "Unsecured Protected Health Information" or "Unsecured PHI" shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of the technology or methodology specified in regulations or other guidance issued by DHHS under Section 13402 of ARRA.

2. **Services and Applicability.** The Covered Entity and Business Associate have entered into the Services Agreement under which Business Associate may create, receive, use, maintain or transmit PHI from or on behalf of the Covered Entity. This BAA shall only be effective in the event that Business Associate meets the definition of a business associate under

45 C.F.R. 160.103. In the event of a conflict between the terms of the Services Agreement and this BAA with respect to the HIPAA Rules, this BAA shall control.

3. **Relationship of the Parties.** None of the provisions of this BAA are intended to create, nor shall they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this BAA and the Services Agreement evidencing their business relationship. Business Associate is an independent contractor and not an agent of the Covered Entity.

4. **Permitted Uses and Disclosures.** Business Associate may use and/or disclose PHI only as permitted or required by the Services Agreement and this BAA, or as otherwise Required by Law. Business Associate may disclose PHI to, and permit the use of PHI by, its employees, contractors, agents, or other representatives only to the extent directly related to and necessary for the performance of the Services. Business Associate shall make uses and disclosures of, and requests for PHI from Business Associate only in a manner consistent with the Covered Entity minimum necessary policies and procedures, and shall request, use or disclose no more than the minimum PHI necessary to perform the Services. Business Associate shall not use or disclose PHI in a manner (i) inconsistent with Business Associate's obligations under the HIPAA Rules or the HITECH Act, or (ii) that would violate the HIPAA Rules or the HITECH Act if disclosed or used in such a manner by Covered Entity.

4.1 If Business Associate conducts in whole or in part Electronic Transactions on behalf of the Covered Entity, Business Associate will comply, and will require any subcontractor it involves with the conduct of such Electronic Transactions to comply, with each applicable requirement of the Electronic Transactions Rule and of any operating rules adopted by DHHS with respect to Electronic Transactions.

4.2 Business Associate may use PHI for the proper management and administration of its business and to carry out its legal responsibilities in accordance with 45 C.F.R. §164.504(e)(4).

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

5. **Safeguards for the Protection of PHI.** Business Associate warrants that it has implemented and shall maintain commercially reasonable and appropriate security safeguards for PHI and will protect the confidentiality and integrity of such PHI created, received, used, maintained or transmitted from, or on behalf of the Covered Entity. Business Associate shall comply with the Security Rule, as may be amended, and with the applicable provisions of the Privacy Rule, as may be amended, in carrying out its obligations under the Services Agreement.

6. **Reporting of Unauthorized Uses and Disclosures.** If Business Associate has knowledge of any use or disclosure of PHI not provided for by this BAA, including any Security Incident, then Business Associate shall promptly notify the Covered Entity in writing. For these purposes, a "Security Incident" shall have the same meaning set forth in the Security Rule: "a Security Incident means the attempted or successful unauthorized access, use, disclosure,

modification or destruction of information or interference with system operations in an information system." Notwithstanding the above, the Parties acknowledge that probes and reconnaissance scans are commonplace in the industry and as such, the Parties acknowledge and agree that, to the extent such probes and reconnaissance scans constitute Security Incidents, this Section 6 constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of such Security Incidents for which no additional notice to Covered Entity shall be required, as long as such probes and reconnaissance scans do not result in unauthorized access, Use, or Disclosure of PHI. Probes and reconnaissance scans as used in this Section 6 include, without limitation, pings and other broadcast attacks on Business Associate's firewalls, port scans, and unsuccessful log-on attempts that do not result in unauthorized access, Use, or Disclosure of PHI.

7. **Reporting of Breach of Unsecured PHI.** Business Associate agrees to promptly report to Covered Entity any Breach of Unsecured PHI of which Business Associate becomes aware in the time and manner specified under 45 C.F.R. 164.410 and within the timeframes contemplated under any applicable state law, as applicable, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Following a Data Breach, Business Associate shall provide the Covered Entity with sufficient information to permit the Covered Entity to comply with the Data Breach notification requirements set forth at 45 C.F.R. §164.400 et seq. To the extent Business Associate is not able to provide all of the information requested by Covered Entity within the time frame set forth above, Business Associate agrees to promptly supplement such information with additional information as it becomes available. Business Associate agrees to act, in cooperation with the Covered Entity, in good faith to investigate and mitigate any harm caused by any unauthorized use, Security Incident, or Data Breach.

8. **Use and Disclosure of PHI by Subcontractors, Agents, and Representatives.** Business Associate shall require any Subcontractor, agent, or other representative that is authorized to create, receive, maintain, or transmit PHI on behalf of Business Associate to execute a business associate agreement to agree in writing to the same terms, restrictions, conditions, and requirements that apply to Business Associate set forth herein.

9. **Individual Rights.** Business Associate shall comply with the following Individual rights requirements as applicable to PHI used or maintained by Business Associate:

9.1. **Right of Access.** Business Associate agrees to provide access to PHI maintained by Business Associate in a Designated Record Set, if any, at the request of the Covered Entity or as directed by the Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. §164.524. Such access shall be provided by Business Associate in the time and manner designated by the Covered Entity, including, where applicable, access by electronic means pursuant to Section 13405(e) of the HITECH Act and 45 C.F.R. §164.524(c)(2) and (3). Upon receipt of a request for access from an Individual, Business Associate shall forward the request, or direct the Individual, to the Covered Entity within fifteen (15) calendar days of receipt.

9.2. **Right of Amendment.** Business Associate agrees to make any amendment(s) to PHI maintained by Business Associate in a Designated Record Set, if any, that the Covered

Entity direct or agree to, pursuant to 45 C.F.R. §164.526, in the time frame and manner designated by the Covered Entity, or take such other measures as directed or agreed to by the Covered Entity to satisfy the Covered Entity's instructions pursuant to such regulation. Upon receipt of a request for amendment from an Individual, Business Associate shall forward such request to the Covered Entity within fifteen (15) calendar days of receipt.

9.3. **Right to Accounting of Disclosures.** Business Associate agrees to document such disclosures of PHI as would be required for the 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. Business Associate agrees to maintain and provide to the Covered Entity or an Individual, in the time and manner designated by the Covered Entity, such information collected in order to permit the 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, as amended by Section 13405(c) of the HITECH Act and any related regulations or guidance issued by DHHS in accordance with such provision. Upon receipt of a request for an accounting of disclosures Business Associate shall forward the request to the Covered Entity within fifteen (15) calendar days of receipt.

9.4. **Modifications to Individual Rights.** Business Associate shall comply with, and shall assist the Covered Entity in complying with, responding to Individuals' requests to restrict the uses and disclosures of their PHI under 45 C.F.R. §164.522.

10. **Prohibition on Sale of PHI.** Business Associate shall not receive or provide direct or indirect remuneration in exchange for any PHI in a manner that would violate Section 13405(d) of the HITECH Act or 45 C.F.R. §164.502(a)(5)(ii). In addition, Business Associate shall not sell PHI or receive any remuneration in exchange for PHI.

11. **Inspection of Books and Records.** Business Associate shall make its internal practices, books, records, and policies and procedures relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, the Covered Entity, available to the DHHS Office for Civil Rights ("OCR"), or their agents, or to the Covered Entity for purposes of monitoring compliance with the HIPAA Rules and the HITECH Act. Such information shall be made available in a time and manner designated by the Covered Entity, DHHS or OCR. Business Associate will promptly correct any violation of this BAA discovered by the Covered Entity and will certify in writing that the correction has been made. The Covered Entity's failure to detect any unsatisfactory or non-compliant practice shall not constitute acceptance of the practice or a waiver of the Covered Entity's enforcement rights under this BAA.

12. **Term and Termination.**

12.1. **Term.** This BAA shall commence on the Effective Date and end with the termination of the Services Agreement, unless terminated sooner pursuant to this Section 12.

12.2. **Termination for Breach.** As provided under 45 C.F.R. §164.504(e)(2)(iii), the Covered Entity may immediately terminate the Services Agreement and any related agreements if the Covered Entity determine that Business Associate has breached a material term of this BAA after Covered Entity shall have provided Business Associate with written notice of the

existence of the breach, stating with particularity the nature of the breach, and shall have provided Business Associate with fifteen (15) calendar days to cure said breach.

12.3. Termination of Subcontractor. If the Covered Entity determines that a Subcontractor of Business Associate has breached a material term of this BAA, the Covered Entity shall provide Business Associate with written notice of the breach, stating with particularity the nature of the breach, and provide Business Associate with fifteen (15) calendar days to require Subcontractor to cure said breach. Nothing contained in this Section 12.3 shall diminish the obligation of Business Associate to ensure the compliance of its Subcontractors with the terms of this BAA. Failure by Business Associate to cure a breach or violation by the Subcontractor, in the manner set forth above, shall be grounds for immediate termination of the Services Agreement.

12.4. Effect of Termination. Upon termination of the Services Agreement, the Covered Entity may, in its sole discretion, recover all PHI relating to the Covered Entity in the possession of Business Associate and its Subcontractors, agents, or representatives. Business Associate shall return to the Covered Entity or, if agreed to by the Covered Entity, destroy all such PHI, and shall retain no copies. If Business Associate reasonably believes that it is not feasible to return or destroy all PHI as described above, Business Associate shall notify the Covered Entity in writing. The notification shall include: (i) a written statement that Business Associate has determined in good faith that it is infeasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination. If the Covered Entity concurs that Business Associate cannot feasibly return or destroy the PHI, Business Associate shall ensure that any and all protections, requirements and restrictions contained in this BAA shall be extended to any PHI retained after the termination of this BAA, and that any further uses and/or disclosures shall be limited to the purposes that make the return or destruction of the PHI infeasible. Business Associate further agrees to comply with all applicable state and federal laws, which may require a specific period of retention, redaction, or other treatment of such PHI.

13. Notices. Any and all notices and other communications required or permitted to be given under this BAA shall be given and deemed delivered as follows: (a) if by personal delivery, on the day of the delivery; (b) if by commercial courier, such as Federal Express or UPS, on the date of the delivery confirmation notice; (c) if sent by overnight U.S. express mail, on the date of the delivery confirmation notice; (d) if sent by registered or certified mail, postage prepaid, on the date of the delivery confirmation notice; or (e) if sent by facsimile or e-mail, on the date following confirmation of successful transmission. All notices shall be sent to the following addresses or to such other addresses as shall be furnished by notice to the other party in accordance with the provisions of this Section 13:

If to the Covered Entity:

Covered Entity Address for notices:

with a copy (which shall not constitute effective notice) to:

Additional Address

If to Business Associate:

Scene Health
10807 Falls Road, # 828
Brooklandville, MD 21022

with a copy to

info@scene.health

14. **Miscellaneous.**

14.1. Survival. The respective rights and obligations of the Parties under Section 11 (Inspection of Books and Records), Section 12.4 (Effect of Termination), and Section 14 (Miscellaneous) shall survive termination of the Services Agreement and this BAA indefinitely, and those other provisions of the Services Agreement and this BAA that apply to rights or obligations of a Party, which continue or arise upon or after the termination of the Services Agreement or this BAA shall survive the termination of the Services Agreement and this BAA to the extent necessary to enforce such rights and obligations and to otherwise effectuate such provisions.

14.2. Regulatory References. A citation in this BAA to the Code of Federal Regulations shall mean the cited section as that section may be amended from time to time.

14.3. Amendment. This BAA may be amended or modified only in a writing signed by the Parties.

14.4. Interpretation/Integration. Any ambiguity in this BAA shall be interpreted to permit compliance with HIPAA, the HIPAA Rules, and HITECH Act. This BAA supersedes any business associate agreement or business associate BAA previously entered into by and between the Parties.

14.5. Governing Law; Venue. This BAA shall be governed by and construed in all respects under the governing law identified in the Services Agreement. If the Services Agreement is silent with respect to governing law, then this BAA shall be governed by the laws of the State of Maryland. All actions commenced to enforce or interpret this BAA shall be brought in the federal and state courts in the governing law state. Neither party may assert or be entitled to relief on a claim of *forum non conveniens* as to a court of competent jurisdiction located in such state and county.

14.6. No Third Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors and permitted assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

14.7. Assignment. This BAA may only be assigned in accordance with the terms and conditions of the Services Agreement.

14.8. Binding Effect. The provisions of this BAA shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

14.9. Counterparts. This BAA may be executed in counterparts, each of which will constitute an original and all of which will be one and the same document.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this BAA effective as of the Effective Date.

emocha Mobile Health Inc. (“Business Associate”)

By:_____

Name Sebastian Seiguer

Title: CEO

Sauk County Health Department

(“Covered Entity”)

By:_____

Name_____

Title:_____