BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("**BAA**") forms a part of and is incorporated into the Main Services Agreement entered into by Clumio, Inc., a Delaware corporation, headquartered at 4555 Great America Parkway, Suite 240, Santa Clara, CA 95054 USA ("**Clumio**"), and the and the legal entity defined as Customer thereunder ("**Customer**"). This is subject to, Clumio's Main Services Agreement entered into by the parties concurrently with this BAA or other written agreement covering the same subject matter executed by Clumio ("**Agreement**"). By entering into the Agreement, Customer and Clumio agree to be bound by the terms of this BAA. Clumio and Customer may be referred to in this BAA individually as a "party" and collectively as the "parties." Capitalized terms not specifically defined in this BAA will have the same meaning as in the Agreement.

1. **Scope and Applicability of this BAA**. This BAA applies to the extent Customer is acting as a Covered Entity or Business Associate, to transmit and store PHI via the Service and where Clumio, as a result, is deemed under HIPAA to be acting as a Business Associate of Customer. When Customer utilizes the Service, as between the parties, Clumio acts as a Business Associate and Customer acts as a Covered Entity under this BAA.

2. **Obligations of Clumio**.

2.1 **Application of Security Rule**. The administrative and technical safeguards set forth in the Security Rule shall apply to Clumio in the same manner that such safeguards apply to Customer. The additional requirements of Subtitle D of the HITECH Act (Sections 13400 through 13411) that relate to security and that are made applicable with respect to covered entities shall also be applicable to Clumio and are hereby incorporated into this BAA.

2.2 **Uses and Disclosures**. Clumio may use and disclose PHI only as permitted under HIPAA and this BAA. Clumio's use of PHI shall be restricted to (i) the storage (backup) or retrieval (restoration) of Electronic PHI that is uploaded to the Service in encrypted form by or on behalf of Customer, and (ii) use of Electronic PHI for the proper management and administration of the Service. Clumio shall not use or further disclose PHI other than (a) as permitted or required by this BAA, or (b) as Required by Law.

2.3 **Security**. Clumio will implement reasonable technical and organizational safeguards designed to protect PHI received from Customer in Clumio's possession or control against unauthorized loss, destruction, alteration, access, or disclosure, in accordance with the Security Rule and the Clumio Security Policy made available at https://clumio.com/legal/securitypolicy/. Clumio may modify such safeguards from time to time, provided that such modifications will not materially reduce the overall level of protection for PHI received from Customer. The parties shall work together in good faith to cooperate with each other's current and future security policies and procedures to ensure the integrity, confidentiality, and availability of PHI in a manner that complies with HIPAA and the Security Rule, as amended from time to time.

2.4 **Notification of Unauthorized Access, Use or Disclosure of PHI**. Clumio shall notify Customer in writing of any unauthorized access, use, or disclosure of unsecured PHI received from Customer as soon as reasonably practicable but in no event later than five (5) business days following the date of discovery. Such notice shall include: (i) a description of the incident, including the date of the breach and the date of the discovery, and (ii) the steps taken by Clumio to mitigate the impact of any unauthorized use or disclosure. Notwithstanding the foregoing, because Clumio cannot readily identify which Individuals are identified or what types of PHI are included in content that Customer transmits or stores via the Service, Customer will be solely responsible for identifying which Individuals, if any, may have been included in any Customer content that Clumio has disclosed and for providing a brief description of the PHI disclosed.

2.5 **Agents and Subcontractors**. Clumio will take appropriate measures to ensure that any agents and subcontractors used by Clumio to perform its obligations under the Agreement that require access to PHI on behalf of Clumio are bound by written obligations that provide the same material level of protection for PHI as this BAA. To the extent Clumio uses agents and subcontractors in its performance of its obligations hereunder, Clumio will remain responsible for their performance as if performed by Clumio itself under the Agreement.

2.6 **Record Keeping**. Clumio agrees to implement an appropriate record keeping process to enable it to comply with the HIPAA requirements applicable to it under this BAA.

2.7 **Access to Records**. To the extent required by law, and subject to applicable attorney client privileges, Clumio will make its internal practices, books, and records concerning the use and disclosure of PHI received from Customer available to the Secretary for the purpose of the Secretary determining compliance with HIPAA and this BAA. Clumio shall promptly notify Customer of any such request and shall provide Customer with a copy of such request and any documents or information provided by Clumio in response to such request. Nothing in this Section 2.6 will waive any applicable privilege or protection, including with respect to trade secrets and confidential commercial information.

2.8 **Destruction of PHI**. Upon termination or expiration of the Agreement for any reason, (i) Customer may retrieve or delete all PHI stored by Customer via the Service as set forth in the Agreement, and (ii) Clumio may delete all PHI stored by Customer via the Service as set forth in the Agreement, unless otherwise required by applicable law. Upon Customer's written request, Clumio shall provide a written certification of the destruction of such PHI. If destruction of such PHI by Clumio is not feasible, then Clumio shall (a) continue to extend the

protections required hereunder to the PHI for as long as it maintains the PHI, and (b) limit any further use or disclosure of the PHI to those purposes that make its destruction infeasible.

2.9 **Prohibition Against Sale or Marketing of PHI.** Clumio shall not (a) directly or indirectly receive remuneration in exchange for any PHI of an individual; or (b) use or disclose PHI for any purpose related directly or indirectly to any sales or marketing communication.

3. **Additional Permissible Uses of PHI by Clumio**. Subject to the terms and conditions of this BAA, and in addition to the PHI use and disclosure limitations by Clumio authorized elsewhere in this BAA, Clumio may use and disclose PHI in connection with the following purposes: (i) as necessary for data aggregation purposes relating to the health care operations of Customer, but only as separately authorized by Customer in writing; (ii) as necessary for data aggregation purposes of Clumio, but only if the PHI is de-identified pursuant to 45 CFR 164.514; (iii) for the proper internal management and administration of Clumio; and (iv) to carry out the legal responsibilities of Clumio. For purposes (iii) and (iv) above, Clumio may use or disclose PHI to third parties only if the disclosure is Required by Law, Clumio obtains reasonable assurances from the person to whom the PHI 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 the person to whom the disclosure is made is obligated to notify Clumio of any instances of which that person is or becomes aware in which the confidentiality of the information has been breached.

4. **Obligations of Covered Entity**.

4.1 **Necessary Consents**. Customer warrants that it has obtained any necessary authorizations, consents, and other permissions that may be required under applicable law prior to transmitting or storing such content, including without limitation PHI, via the Service.

4.2 **Restrictions on Disclosures**. Customer will not agree to any restriction requests or place any restrictions in any notice of privacy practices that would cause Clumio to violate this BAA or any applicable law.

4.3 **Compliance with HIPAA**. Customer is responsible for implementing appropriate privacy and security safeguards in order to protect PHI transmitted or stored via the Service in compliance with HIPAA and this BAA, up to the demarcation point of the Service. Customer will not request or cause Clumio to make a use or disclosure of PHI in a manner that does not comply with HIPAA or this BAA.

5. **Term and Termination**. This BAA will expire on the earlier of: (i) an authorized termination in accordance with this BAA; (ii) the natural expiration or termination of the Agreement; or (iii) the execution of an updated BAA that supersedes this BAA.
Either party may immediately terminate this BAA and the Agreement if the other party materially breaches any provision of this BAA and fails to cure such breach within 30 days from the date of such party's written notice to the other party; or, if termination is not feasible, either party may report the problem to the Secretary. Solely to the extent that Clumio retains PHI received from Customer, the terms and conditions of this BAA shall remain in full force and effect following termination.

6. **No Assignment**. This BAA will inure to the benefit of each party's permitted successors and assigns. Except in connection with a merger, acquisition, or sale of all or substantially all of a party's assets or voting securities, neither party may assign this BAA without the advance written consent of the other party. Any other transfer or assignment of this BAA except as expressly authorized under this Section will be null and void.

7. **Interpretation**. It is the parties' intent that any ambiguity under this BAA will be interpreted consistently with the intent to comply with applicable laws, including without limitation, HIPAA.

8. **Miscellaneous**. This BAA and the Agreement is the entire agreement between Clumio and Customer and supersedes all previous written and oral communications between the parties with respect to the subject matter hereof. The parties agree that this BAA shall replace and supersede any existing business associate agreement that the parties may have previously entered into in connection with the Service. Except as provided by this BAA, the Agreement remains unchanged and in full force and effect. This BAA may only be amended in a writing signed by duly authorized representatives of the parties. If any provision of this BAA is held to be invalid or unenforceable, that provision will be limited to the minimum extent necessary so that this BAA will otherwise remain in effect. Any waiver or failure to enforce any provision of this BAA on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. This BAA may be executed in the original or other electronic means in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. This BAA will be governed by and construed in accordance with governing law and jurisdiction provisions in the Agreement. Nothing in this BAA is intended to create an agency relationship between the parties.

9. **Priority of Terms**. To the extent there is a conflict between the Agreement and the terms of this BAA, the terms of this BAA will prevail in connection with PHI. Notwithstanding the foregoing, and solely to the extent Customer and Clumio have also signed a DPA, if there is any conflict between this BAA and the DPA, then this BAA shall prevail solely with respect to such PHI.

10. **Definitions**. Capitalized terms not specifically defined in this BAA will have the same meaning as in the Agreement.

"**Business Associate**" shall have the same meaning as the term "business associate" in 45 CFR 160.103.

"**Covered Entity**" shall have the same meaning as the term "covered entity" in 45 CFR 160.103.

“**Designated Record Set**” shall have the same meaning as the term “designated record set” in 45 CFR 164.501.

“**DPA**” means a data processing addendum as made available by Clumio at https://clumio.com/legal/dpa/ and executed by the parties, if applicable.

“**Electronic Protected Health Information**” or “**EPHI**” shall have the same meaning as the term “electronic protected health information,” at 45 CFR 160.103.

“**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996, as amended.

“**HITECH Act**” means the Health Information Technology for Economic and Clinical Health Act, found in the American Recovery and Reinvestment Act of 2009 at Division A, title XIII and Division B, Title IV.

“**Individual**” shall have the same meaning as the term “individual” in 45 CFR 160.103, and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

“**Protected Health Information**” or “**PHI**” shall have the same meaning as the term “protected health information” in 45 CFR 160.103.

“**Required By Law**” shall have the same meaning as the term “required by law” in 45 CFR 164.103.

“**Secretary**” shall mean the Secretary of the Department of Health and Human Services, or his designee.

“**Security Rule**” means the “Standards for the Security of Electronic Protected Health Information,” at 45 CFR parts 160, 162 and 164, as provided pursuant to HIPAA.