

## **HIPAA BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("BAA") is made and entered into, effective as of the date of the first written agreement between DAS Health Ventures, LLC, including its affiliates and subsidiaries ("Business Associate"), a provider of PM/EHR, revenue cycle management, consulting, managed services, and other related services, whose business address is 1000 N. Ashley Drive, Suite 300, Tampa, FL 33602, and Client ("Covered Entity"), with their address on file with Business Associate. Covered Entity and Business Associate may each be referred to as a "Party", or together as the "Parties". Covered Entity and Business Associate have entered into an agreement for the provision of certain services to Covered Entity by Business Associate (the "Agreement").

1. **Definitions.** Terms used, but not otherwise defined in this BAA, shall have the same meaning as those terms in the Health Insurance Portability and Accountability Act ("HIPAA") and the Florida Information Protection Act, FL. Stat. 501.171 ("FIPA"), as applicable.
  - a. Business Associate. "Business Associate" shall mean DAS Health Ventures, LLC, including its affiliates, subsidiaries, and predecessor companies, as further defined in 45 C.F.R. §160.103.
  - b. Individual. "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).
  - c. "Personal Information" under FIPA shall mean either:
    - i. An individual's first name or first initial and last name in combination with any one or more of the following data elements for that individual:
    - ii. A social security number;
    - iii. A driver license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;
    - iv. A financial account number or credit or debit card number, in combination with any required security code, access code, or password that is necessary to permit access to an individual's financial account;
    - v. Any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional; or
    - vi. An individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual; or
    - vii. A user name or email address, in combination with a password or security question and answer that would permit access to an online account.
  - d. Protected Health Information. ("PHI") shall have the meaning as set forth in 45 C.F.R. §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
  - e. Individually Identifiable Health Information ("PI"). PI shall have the meaning as set forth in 45 C.F.R. §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity..
  - f. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. §160 and § 164, Subparts A and E.
  - g. Required By Law. "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103, and other applicable laws and regulations.
  - h. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
  - i. Security Rule. "Security Rule" shall mean the Standards for Security of Electronic

Protected Health Information at 45 CFR parts § 160 and § 164, subparts A and C.

**2. Obligations and Activities of Business Associate.**

- a. Business Associate agrees to not use or disclose PHI or PI other than as permitted or required by this BAA or as Required by Law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI or PI other than as provided for by this BAA. Business Associate agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any electronic PHI or PI that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity, as provided for in the Security Rule.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI or PI by Business Associate in violation of the requirements of this BAA.
- d. Business Associate agrees to report to Covered Entity any use or disclosure of the PHI or PI not provided for by this BAA of which it becomes aware. Business Associate also agrees to report to Covered Entity any security incident, any breach of unsecured Protected Health Information (as defined under HIPAA), and any breach of security of Personal Information within five (5) business days of discovery of same.
- e. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI or PI received from, or created or received by Business Associate on behalf of, Covered Entity, agrees to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such information.
- f. Business Associate agrees to provide access, at the request of Covered Entity and during normal business hours, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524, provided that Covered Entity delivers to Business Associate a written notice at least five (5) business days in advance of requesting such access. This provision does not apply if Business Associate and its employees, subcontractors and agents have no PHI in a Designated Record Set of Covered Entity.
- g. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526, at the request of Covered Entity or an Individual, so long as Business Associate's security protocols permit access to the records. This provision does not apply if Business Associate and its employees, subcontractors and agents have no PHI from a Designated Record Set of Covered Entity.
- h. Unless otherwise protected or prohibited from discovery or disclosure by law, Business Associate agrees to make internal practices, books, and records, including policies and procedures, relating to the use or disclosure of PHI received from, or create or received by Business Associate on behalf of, Covered Entity, available to Business Associate for purposes of the Secretary determining Covered Entity's OR Business Associate's compliance with the Privacy Rule or Security Rule. Business Associate shall have a reasonable time within which to comply with requests for such access and in no case shall access be required in less than five (5) business days after Business Associate's receipt of such request, unless otherwise designated by the Secretary.
- i. Business Associate agrees to maintain necessary and sufficient documentation of disclosures of PHI as would be required for Covered Entity to respond to a request by an Individual for an accounting of such disclosures, in accordance with 45 C.F.R. § 164.528.
- j. On request of Covered Entity, Business Associate agrees to provide to Covered Entity documentation made in accordance with this BAA to permit 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 shall have a reasonable time within which to comply with such a request from Covered Entity and in no case shall Business Associate be required to provide such documentation in less than five (5) business days after Business Associate's receipt of such request.

- k. Except as otherwise required by law, in the event Business Associate receives an access, amendment, accounting of disclosure, or other similar request directly from an Individual, Business Associate will redirect the Individual to the Covered Entity.

**3. Permitted Uses and Disclosures by Business Associate.**

- a. Except as otherwise limited by this BAA, Business Associate may make any uses and disclosures of PHI or PI necessary to perform its services to Covered Entity under the Agreement and otherwise meet its obligations under this BAA, if such use or disclosure would not violate the Privacy Rule if done by Covered Entity. All other uses or disclosures by Business Associate not authorized by this BAA or by specific instruction of Covered Entity are prohibited.
- b. Except as otherwise limited in this BAA, Business Associate may use PHI or PI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- c. Except as otherwise limited in this BAA, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- d. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).
- e. Business Associate agrees to make all uses and disclosure consistent with its minimum necessary policies and procedures.
- f. Business Associate may use PHI to create de-identified information in accordance with 45 C.F.R. § 164.514(b).

**4. Obligations of Covered Entity.**

- a. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI or PI, to the extent that such changes may affect Business Associate's use or disclosure of PHI or PI.
- c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- d. To the fullest extent possible, Covered Entity agrees to indemnify, defend, and hold DAS, its employees, agents and independent contractors harmless from and against any and all claims, demands, losses, damages, costs, judgments, expenses, or liabilities (including reasonable legal fees) arising in whole or in part from, relating in whole or in part to, caused in whole or in part by, or alleged or claimed to be caused in whole or in part by: (i) Covered Entity's act or omission to act, including those acts or omissions of Covered Entity's employees or agents; (ii) the violation of any law, regulation, or ordinance by Covered Entity, its employees or agents; (iii) Covered Entity's breach of the Agreement or this BAA, including (but not limited to) a breach of Section 2(k) above.

**5. Term and Termination.**

- a. Term. The Term of this BAA shall be effective as of the Effective Date of the Agreement, and shall terminate upon termination or expiration of the Agreement.
- b. Termination for Cause. Covered Entity may terminate this BAA, and Business Associate agrees to such termination, if Business Associate has breached a material term of this BAA and does not cure the breach within thirty (30) days after written notice of same or cure is not possible.

c. Effect of Termination.

- i. Except as provided in paragraph (2) of this section, upon termination of this BAA for any reason and written request by Covered Entity, Business Associate shall return or destroy all PHI and PI received from, or created or received by Business Associate on behalf of, Covered Entity. This provision shall apply to PHI and PI that is in the possession of any subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI and PI except as necessary for ongoing legal or regulatory business requirements.
- ii. In the event that Business Associate determines that returning or destroying the PHI and PI is infeasible, Business Associate shall provide to Covered Entity, within ten (10) business days, notification of the conditions that make return or destruction infeasible. Upon such determination, Business Associate shall extend the protections of this BAA to such PHI and PI and limit further uses and disclosures of such PHI and PI to those purposes that make the return or destruction infeasible, for as long as Business Associate maintains such PHI and PI.

6. **Miscellaneous.**

- a. Regulatory References. A reference in this BAA to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for each Party to comply with the requirements of the Privacy Rule or Security Rule and the Health Insurance Portability and Accountability Act of 1996, 45 CFR 1 - 199.
- c. Survival. The respective rights and obligations of Business Associate under Section 5(c) of this BAA shall survive the termination of this BAA.
- d. Interpretation. Any ambiguity in this BAA shall be resolved to permit Covered Entity to comply with the Privacy Rule or the Security Rule.

7. **Incorporation by Reference.** This BAA is not intended to stand alone. It is effective only as incorporated by reference into any and all agreements in effect between Business Associate and Covered Entity during their respective terms, including without limitation Agreement, Program Agreement, Client Order Form, Statement of Work, TCO Agreement and RCM Agreement, and shall supersede and take precedence over any other business associate agreement between the Parties, notwithstanding any other terms to the contrary.