

BUSINESS ASSOCIATE AGREEMENT

The parties to this Business Associate Agreement (“Agreement”) are MDops Corporation, a New York corporation (“Business Associate”) and (“Client”) you, as a user of our on-line health record system (the "System"). BY CLICKING ON "Register" OR THROUGH THE CONTINUED USE OF THE SYSTEM, YOU ARE UNDERTAKING LEGAL OBLIGATIONS AND CONFERRING LEGAL RIGHTS. Please read this agreement carefully, and do not click "Register" or continue use of the System unless you agree fully with its terms. The Effective Date of this Agreement is the Date you the “client” accepted this agreement and registering to use the application.

BACKGROUND

- A. Business Associate provides internet-based Software application services (“Services”) for the healthcare industry, hosted on Business Associate’s owned, controlled or contracted data centers.
- B. Client is purchasing Services from Business Associate, and through the use of the Services Client may disclose certain information to Business Associate, some of which may constitute PHI.
- C. Business Associate and Client intend to protect the privacy and provide for the security of PHI disclosed to Business Associate in conjunction with the Services in compliance with HIPAA and the HITECH Act.
- D. HIPAA’s Privacy Rule and Security Standards (each defined below) require Client to enter into a contract imposing defined requirements on Business Associate before the disclosure of PHI occurs.

AGREEMENT

1. **Definitions.** As used in this Agreement:

“**Breach Notification Standards**” means the HIPAA regulations governing notification in the case of breach of unsecured PHI as set forth at 45 CFR § Part 164, Subpart D, and all applicable stricter state and federal laws, as they exist now or as they may be amended.

“**Designated Record Set**” means a group of records maintained by or for Client that is (i) the medical records and billing records about individuals maintained by or for Client, (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan, or (iii) used, in whole or in part, by or for Client to make decisions about individuals. As used herein, the term “Record” means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for Client.

“**HIPAA**” means the Health Insurance Portability and Accountability Act, Public Law 104-91, and any amendments thereto.

“**HIPAA Transaction**” means Transactions as defined in 45 CFR § 160.103 of the Transaction Standards.

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

“**Minimum Necessary**” has the meaning set forth in the Health Information Technology for Economic and Clinical Health Act, § 13405(b).

“**Privacy Rule**” means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR § Part 160 and Part 164, as they exist now or as they may be amended.

“**Protected Health Information**” or “**PHI**” has the meaning set forth at 45 CFR § 160.103 of HIPAA.

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

“**Secretary**” means the Secretary of the Department of Health and Human Services or his or her designee.

“**Security Standards**” means the Security Standards, 45 CFR § parts 160, 162 and 164, as they exist now or as they may be amended.

“**Transaction Standards**” means the Standards for Electronic Transactions, 45 CFR § part 160 and part 162, as they exist now or as they may be amended.

Terms used but not otherwise defined in this Agreement have the same meaning as those terms in 45 CFR §§ 160.103 and 164.501.

2. Obligations and Activities of Business Associate.

2.1. This Agreement applies only to the extent that Client actually transmits PHI to Business Associate in conjunction with Business Associate’s delivery of Services. The parties acknowledge and agree that the delivery of Services may not involve the transmission of any PHI from Client to Business Associate.

2.2. Business Associate agrees that it will not, and that its directors, officers, employees, contractors and agents will not, use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law.

2.3. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.

2.4. Business Associate agrees to mitigate, to the extent Required by Law, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

2.5. Business Associate agrees to report to Client any use or disclosure of PHI not authorized under this Agreement of which it becomes aware, or of any act or omission that violates the terms of this Agreement in accordance with Section 2.18 below.

2.6. Business Associate agrees to ensure that any agent, including a subcontractor, to which or whom it provides PHI received from, or created or received by Business Associate on behalf of Client, agrees in writing to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

2.7. Business Associate agrees to provide access, at the request of Client, and in the time and manner designated by Client, to PHI in a Designated Record Set, to Client or, as directed by Client, to an Individual in order to meet the requirements under 45 CFR § 164.524 and HITECH Act § 13405(e).

2.8. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that Client directs or agrees to pursuant to 45 CFR § 164.526 at the request of Client or an Individual, and in the time and manner designated by Client. If Business Associate provides Designated Record Sets to third parties, Business Associate will use reasonable efforts to ensure such records are also amended.

2.9. Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Client, available to the Secretary, in a time and manner designated by Client or the Secretary, for purposes of the Secretary determining Client's compliance with the Privacy Rule.

2.10. Business Associate agrees to document disclosures of PHI, and information related to such disclosures, as would be required for Client to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528 and any additional regulations promulgated by the Secretary pursuant to HITECH Act § 13405(c). Business Associate agrees to implement an appropriate record keeping process that will track, at a minimum, the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure.

2.11. Business Associate agrees to provide to Client or to an Individual, in the time and manner designated by Client, information collected in accordance with Section 2.10 of this Agreement, to permit Client to respond to a request by an Individual for an accounting of disclosures of PHI during the six (6) years prior to the date on which the accounting was requested, in accordance with 45 CFR § 164.528.

2.12. In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, Business Associate will respond as permitted by 45 CFR § 164.512(e) and (f).

2.13. Business Associate will not make any communications to individuals in violation of the restrictions on marketing in HITECH Act § 13406(a) and without the prior consent of Client.

2.14. If Business Associate will communicate with any individuals who are the subject of PHI originating from or prepared for Client, Business Associate agrees to implement procedures to give timely effect to an individual's request to receive communications of PHI by alternative means or at alternative locations, pursuant to 45 CFR § 164.522(b), so as to ensure that PHI will only be communicated to those individuals designated in such a request as authorized to receive the PHI.

2.15. Business Associate will not directly or indirectly receive or provide remuneration in exchange for any PHI in violation of any final regulations promulgated by the Secretary under HITECH Act § 13405(d) once such regulations become effective.

2.16. Electronic Transactions. Business Associate hereby agrees that, to the extent that it is electronically transmitting any of the HIPAA Transactions for Client, the format and structure of such transmissions will be in compliance with the Transaction Standards.

2.17. Electronic Data Security. To the extent that Business Associate creates, receives, maintains or transmits electronic PHI, Business Associate hereby agrees that it:

2.17.1. Has implemented and documented administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that Business Associate creates, receives, maintains or transmits on behalf of Client consistent with the requirements at 45 CFR §§ 164.308, 164.310, 164.312 and 164.316;

2.17.2. Will ensure that any agent, including a subcontractor, to whom Business Associate provides electronic PHI agrees to implement reasonable and appropriate safeguards to protect the PHI; and

2.17.3. Will keep records of all Security Incidents involving PHI of which Business Associate becomes aware, and will report to Client all significant Security Incidents of which Business Associate becomes aware.

2.18. Breach Notification. Business Associate has in place policies and procedures that are designed to detect inappropriate acquisition, access, use or disclosure of PHI and trains its work force and agents on these procedures. Business Associate will notify Client within ten (10) business days of discovering an inappropriate acquisition, access, use or disclosure of PHI by Business Associate or its work force and agents and, as soon as reasonably practicable, but in no event later than thirty (30) calendar days of discovery will provide Client with the identification of each individual whose PHI has been or is reasonably believed by Business Associate to have been breached. Business Associate will assist Client in assessing whether the inappropriate

acquisition, access, use or disclosure of PHI constitutes a Breach. In the event that individuals whose data is affected by the impermissible acquisition, access, use or disclosure must be notified pursuant to the HIPAA Breach Notification Standards or other applicable law, Business Associate will, upon Client's request, provide such notification at its own expense without unreasonable delay and in compliance with applicable law or reimburse Client's reasonable costs for such notification. **BUSINESS ASSOCIATE IS NOT OBLIGATED TO, IN ANY MANNER WHATSOEVER, VIEW, TRACK, MONITOR, AUDIT, MANAGE OR PERFORM ANY SUCH SIMILAR TASKS RESPECTING THE PHI BEING STORED BY CLIENT ON BUSINESS ASSOCIATE'S SERVERS.**

3. Permitted Uses and Disclosures by Business Associate

3.1. General Use. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on behalf of or to provide Services to Client for the following purposes, if such use or disclosure of PHI would not violate the Privacy Rule if done by Client or the minimum necessary policies and procedures of the Client that have been communicated to Business Associate: transmission and storage of health information, potentially including PHI, pertaining to the individuals served by Client.

3.2. Specific Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that disclosures are Required by Law, or Business Associate 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

4. Obligations of Client.

4.1. Client will notify Business Associate of any limitation(s) in the notice of privacy practices of Client in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI. Business Associate will give timely effect to such limitations.

4.2. Client will notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI. Business Associate will give timely effect to such changes or revocations.

4.3. Client will notify Business Associate of any restriction to the use or disclosure of PHI that Client has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI. Business Associate will give timely effect to such restrictions.

4.4. Client will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Client, except as specifically allowed by Section 3.2 of this Agreement.

5. Term and Termination.

5.1. Term. The Term of this Agreement will be effective so long as Client is purchasing Services from Business Associate, and will terminate when all of the PHI provided by Client to Business Associate, or created or received by Business Associate on behalf of Client, is destroyed or returned to Client, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

5.2. Termination for Breach by Business Associate. Upon Client's knowledge of a material breach of the terms of this Agreement by Business Associate, Client will either:

5.2.1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate their relationship if Business Associate does not cure the breach or end the violation within the time specified by Client;

5.2.2. Immediately terminate its relationship with Business Associate if Business Associate has breached a material term of this Agreement and cure is not possible; or

5.2.3. If neither termination nor cure are feasible, report the violation to the Secretary.

5.3. Termination for Breach by Client. Upon Business Associate's knowledge of a material breach of the terms of this Agreement by Client, Business Associate will either:

5.3.1. Provide an opportunity for Client to cure the breach or end the violation and terminate their relationship if Client does not cure the breach or end the violation within the time specified by Business Associate;

5.3.2. Immediately terminate its relationship with Client if Client has breached a material term of this Agreement and cure is not possible; or

5.3.3. If neither termination nor cure are feasible, report the violation to the Secretary.

5.4. Other Conditions Allowing for Immediate Termination. Notwithstanding anything to the contrary in this Agreement or any agreement pertaining to the purchase and delivery of Services, either party may terminate its relationship with the other party immediately upon written notice to the other party, without any notice period and/or judicial intervention being required, and without liability for such termination, in the event that:

5.4.1. The other party (i) receives a criminal conviction, (ii) is excluded, barred or otherwise ineligible to participate in any government health care program, including but not limited to Medicare, Medicaid, CHAMPUS or Tricare; (iii) is named as a defendant in a criminal proceeding for a violation of any information privacy and protection law; or (iv) is found to have or stipulates that it has violated any privacy, security or confidentiality protection requirements under any applicable information

privacy and protection law in any administrative or civil proceeding in which the other party has been joined;

5.4.2. A trustee or receiver is appointed for any or all property of the other party;

5.4.3. The other party becomes insolvent or unable to pay debts as they mature, or ceases to so pay, or makes an assignment for benefit of creditors; or

5.4.4. The other party is dissolved or liquidated.

5.5. Effect of Termination.

5.5.1. Except as provided in paragraph 5.5.2 of this Section, upon termination of the Agreement, for any reason, Business Associate will return or destroy all PHI received from Client, or created or received by Business Associate on behalf of Client. This provision will apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate will retain no copies of the PHI.

5.5.2. In the event that return or destruction of the PHI is infeasible, Business Associate will extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

6. Indemnification and Insurance.

6.1. Indemnification. Subject to Section 6.2, each party agrees to indemnify and hold harmless the other from and against any and all losses, liabilities, judgments, fines, penalties or assessments (“Losses”) arising out of or related to a breach of this Agreement, or a Breach as defined by 42 CFR 164.402, by that party or its employees, agents, subcontractors or independent contractors. Notwithstanding anything to the contrary set forth in the foregoing, and for clarification purposes, Business Associate shall have no obligation to indemnify and hold harmless Client for any Losses incurred as a result of: (a) Client sending unencrypted PHI to Business Associate; (b) Client storing or maintaining unencrypted PHI on computers, tablet computers and smartphones of Client or any Client customer; (c) failure of Client, any Client customer, or any of their respective employees, agents or contractors, to use Business Associate’s services in such manner as to prevent any unauthorized access to, acquisition, use or disclosure of PHI; (d) failure of Client, any Client’s customer, or any of their respective employees, agents or contractors to implement and at all times utilize all security measures offered or recommended by Business Associate with respect to (i) PHI, (ii) Client devices including but not limited to computers, tablet Computers and SmartPhone, or (iii) Business Associate’s Services utilized by Client or any Client customer, (e) failure by Client, any Client’s customer, or any of their respective employees, agents or contractors to implement and at all times utilize any safeguards consistent with the Security Regulations and any applicable state laws which results in an unauthorized access to, acquisition, use or disclosure of PHI contained in Business Associate’s services, (f) any incident of unauthorized access to, acquisition, use or disclosure of PHI by Client, any Client’s customer or their respective employees, agents or contractors, or (g) any incident of unauthorized access to, acquisition, use or disclosure of PHI where the unauthorized party was granted or gained access to PHI, Business Associate’s

Services application or PHI Locations by or due to any action or omission of Client, Client's customer or any of their respective employees, agents or contractors.

Each party will be responsible for engagement and payment of its own attorneys, experts or other consultants or experts necessary to respond to any federal or state government investigation arising out of a claimed violation of law. Additionally, each party is responsible for any and all fines, penalties, assessment or civil money penalties assessed by an governmental entity arising from that party's failure to properly respond or comply with a federal or state government audit or any investigation into a claimed violation of law unless such failure to respond or comply is as a result of the other party's delay in providing timely notice under Section 2.18.

6.2. Limitation of Liability. Notwithstanding anything to the contrary contained herein, neither party will be liable to the other under this Agreement for consequential, incidental, punitive, special, exemplary or indirect damages, or lost profits in connection with claims made by any party, regardless of the form of action, whether in contract or tort. Each party's maximum aggregate liability to the other party or any third party for any Losses, damages or other liabilities, whether based on warranty, contract, negligence, or otherwise, will not exceed the sum of all fees paid by Client to Business Associate DURING THE THREE (3) MONTH PERIOD PRIOR TO THE OCCURRENCE OF THE EVENT(S) GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY REGARDLESS OF THE CAUSE OF ACTION ASSERTED BY CLIENT OR ANY THIRD PARTY IN ANY JURISDICTION IN WHICH THE FOREGOING LIMITATION OF LIABILITY IS RESTRICTED. MDOPS'S LIABILITY SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW. THE PROVISIONS OF THIS SECTION 6 SHALL SURVIVE TERMINATION OF THIS AGREEMENT FOR ANY REASON.

7. Miscellaneous.

7.1. **Amendment.** No provision of this Agreement may be modified except by a written document signed by a duly authorized representative of the parties. The parties agree to amend this Agreement, as appropriate, to conform with any new or revised legislation, rules and regulations to which Client is subject now or in the future including, without limitation, the Privacy Rule, Security Standards or Transactions Standards (collectively "Laws"). If within ninety (90) days of either party first providing written notice to the other of the need to amend this Agreement to comply with Laws, the parties, acting in good faith, are i) unable to mutually agree upon and make amendments or alterations to this Agreement to meet the requirements in question, or ii) alternatively, the parties determine in good faith that amendments or alterations to the requirements are not feasible, then either party may terminate this Agreement upon thirty (30) days' written notice.

7.2. **Assignment.** No party may assign or transfer any or all of its rights and/or obligations under this Agreement or any part of it, nor any benefit or interest in or under it, to any third party without the prior written consent of the other party, which will not be unreasonably withheld.

7.3. Survival. The respective rights and obligations of Business Associate under Section 5.5 of this Agreement will survive the termination of this Agreement.

7.4. Interpretation. Any ambiguity in this Agreement will be resolved to permit Client to comply with the Breach Notification Standards, Privacy Rule, Security Standards, and Transaction Standards. If there is any inconsistency between this Agreement and any other agreement between the parties, the language in this Agreement will control.

7.5. Third Party Rights. The terms of this Agreement are not intended, nor should they be construed, to grant any rights to any parties.

7.6. Minimum Necessary. Business Associate agrees that, for all PHI that Business Associate accesses or requests from Client for the purposes of providing Services, it will access or request, and Client will provide, only that amount of information that is minimally necessary to perform such Services. In addition, for all uses and disclosures of PHI by Business Associate, Business Associate will institute and implement policies and practices to limit such uses and disclosures to that which is minimally necessary to perform its Services. Business Associate will determine the amount minimally necessary consistent with the requirements in the HITECH Act, § 13405(b), or as otherwise specified in regulations promulgated by the Secretary of the Department of Health and Human Services.

7.7. HITECH Act, § 13404. Business Associate may use and disclose PHI only if such use or disclosure, respectively, is in compliance with each applicable requirement of 45 CFR §164.504(e) and this Agreement. The additional requirements of the HITECH Act, §§ 13400-13425 that relate to privacy and that are made applicable with respect to covered entities are also applicable to Business Associate and are hereby incorporated into this Agreement.

7.8. Governing Law. This Agreement and the parties' rights and obligations under this Agreement are governed by the laws of the State of New York. Both parties consent to the jurisdiction of the courts of the State of New York.

7.9. Notice. All notices required under this Agreement will be in writing and will be deemed to have been given on the next day by fax or other electronic means or upon personal delivery, or in ten (10) days upon delivery in the mail, first class, with postage prepaid. Notices will be sent to the addressees indicated below unless written notification of change of address will have been given.

If to Client

Tel: _____

Fax: _____

If to Business Associate:

Compliance@MDops.com

Tel: ___1.800.349.7001_____

Fax: ___1.800.349.7001_____