

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (“Agreement”) is entered into by DaVita Inc., on behalf of its subsidiaries, affiliates, and related organizations (collectively “Covered Entity”), and _____ (“Business Associate”) as of the date that Covered Entity signs this Agreement (“Effective Date”).

R E C I T A L S

WHEREAS, Covered Entity and Business Associate have entered into an agreement (“Supply Agreement”) whereby Business Associate provides products and/or services (collectively “Deliverables”) to Covered Entity; and

WHEREAS, Business Associate requires access to Protected Health Information or other health information that is protected by state and/or federal law in connection with its performance of the Supply Agreement; and

WHEREAS, Covered Entity and Business Associate desire to reflect their mutual understanding regarding the use, disclosure and general confidentiality obligations of Business Associate relating to any Protected Health Information that Business Associate accesses in connection with its performance of the Supply Agreement and to allow Covered Entity and Business Associate to fully comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, the “Privacy Rule” (45 CFR Parts 160 and 164, subparts A and E), the “Security Rule” (45 CFR Part 164, subparts A and C), and the federal “Breach Notification Rule” (45 CFR Part 164, subpart D), as amended or added by the Health Information Technology for Economic and Clinical Health Act (“HITECH”) and its implementing regulations (collectively “HIPAA”).

NOW, THEREFORE, the parties agree as follows:

1. DEFINITIONS

- 1.1 “PHI” and “Protected Health Information”** mean “protected health information” as defined in the Privacy Rule.
- 1.2 “Covered Entity PHI”** means PHI that is created, maintained, transmitted, or received by Business Associate from or on behalf of Covered Entity.
- 1.3 Other Capitalized Terms**: All other capitalized terms used, but not otherwise defined, herein have the meanings ascribed to them in HIPAA.
- 1.4 Amendments to HIPAA**: A reference in this Agreement to a section of HIPAA means the section as it exists on the Effective Date or as it may be amended during the term of this Agreement.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- 2.1. Permitted Uses**: Business Associate will use Covered Entity PHI solely as permitted by this Agreement to (i) provide the Deliverables or (ii) carry out the proper management and administration of Business Associate, provided however, that in no circumstance may Business Associate use Covered Entity PHI in a manner that, if done by Covered Entity, would violate HIPAA.

2.2. Permitted Disclosures: Business Associate shall (i) hold Covered Entity PHI in confidence and (ii) not disclose Covered Entity PHI except as (A) Required by Law, (B) permitted by this Agreement to provide the Deliverables, or (C) necessary for the proper management and administration of Business Associate; provided that (x) such disclosure is limited to the minimum amount of PHI necessary, (y) Business Associate obtains reasonable assurances from the recipient that the PHI will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to recipient, and (z) recipient agrees to notify the Business Associate of any known breach of the confidentiality of the disclosed PHI .

2.3. Obligations of Business Associate:

2.3.1. De-Identified Health Information: Except as otherwise provided herein, Business Associate will not de-identify any Covered Entity PHI without Covered Entity's prior written consent, provided however, such consent will not be required for Business Associate to de-identify PHI in accordance with the Privacy Rule as necessary to provide the Deliverables under the Supply Agreement.

2.3.2. Safe guards: Business Associate shall implement appropriate administrative, physical and technical safeguards to prevent the use or disclosure of Covered Entity PHI for any purpose other than those permitted by this Agreement.

2.3.3. Minimum Necessary: Business Associate will make reasonable efforts to use, disclose and request of Covered Entity only the minimum amount of PHI reasonably necessary to accomplish the intended purpose of the use, disclosure or request. Without limiting the generality of the foregoing, Business Associate shall act in accordance with any related guidance promulgated by HHS.

2.3.4. No Sale of PHI: Except as specifically permitted by the Supply Agreement or approved by Covered Entity's prior written consent, Business Associate will not sell, transfer, sub-license or disclose Covered Entity PHI to a third party, or receive any remuneration for the same. Any approved sale must be in accordance with the Privacy Rule.

2.3.5. No Marketing: Business Associate will not use or disclose Covered Entity PHI for any marketing activities, without Covered Entity's prior written consent. Any permitted use must be in accordance with the Privacy Rule.

2.3.6. Agents and Subcontractors: Prior to disclosing Covered Entity PHI to any agent or Subcontractor engaged in accordance with the Supply Agreement, Business Associate will ensure that such agent or Subcontractor is bound to the same restrictions, obligations and conditions as required in this Agreement.

2.3.7. Inspection and Copies: Within ten (10) business days after receiving Covered Entity's written request, Business Associate will make Covered Entity PHI in a Designated Record Set within Business Associate's custody or control available to Covered Entity or, at Covered Entity's direction, to an Individual (or the Individual's Personal Representative) for inspection and copying pursuant to 45 CFR § 164.524.

2.3.8. Amendments: In accordance with 45 CFR § 164.526, Business Associate shall amend a

Designated Record Set containing PHI promptly upon receiving Covered Entity's written notice.

- 2.3.9. Documenting Disclosures:** Business Associate shall document all of Business Associate's disclosures of Covered Entity PHI other than disclosures to Covered Entity, an Individual, or an Individual's health care providers for treatment or payment purposes. This documentation shall include: (1) the date of the disclosure; (2) the name of the entity or person who received the Covered Entity PHI and, if known, the address of such entity or person; (3) a brief description of the Covered Entity PHI disclosed; and (4) a brief statement that would reasonably inform the Individual of the basis for the disclosure.
- 2.3.10. Accounting of Disclosures:** Business Associate will maintain records of its disclosures of Covered Entity PHI as necessary for Covered Entity to respond to an Individual's request for an accounting of disclosures pursuant to 45 CFR § 164.528. Business Associate shall, within ten (10) business days of receiving Covered Entity's written notice, make such records available to Covered Entity for the purpose of Covered Entity providing Individuals with an accounting of the disclosures of their PHI as required by 45 CFR § 164.528.
- 2.3.11. Restriction Agreements and Confidential Communication Requests.** Business Associate shall comply with any agreement that Covered Entity makes that either (i) restricts the use or disclosure of Covered Entity PHI pursuant to 45 C.F.R. § 164.522(a) or (ii) requires confidential communication about Covered Entity PHI pursuant to 45 C.F.R. § 164.522(b), provided that Covered Entity has notified Business Associate in writing of such restriction or confidential communication obligation.
- 2.3.12. Access to Books and Records:** Business Associate will make its internal practices, books, and records related to the use and disclosure of PHI available to Covered Entity for the purpose of determining Business Associate's compliance with this Agreement and to HHS for the purpose of determining Business Associate's and/or Covered Entity's compliance with HIPAA.
- 2.3.13. Breach of Agreement, Privacy Rule or Security Rule; Security Incident Reporting; Breach Notification involving Unsecured PHI:** Business Associate will report to Covered Entity, within seventy-two (72) hours of discovery, any (i) breach of this Agreement; (ii) Security Incident as defined at 45 C.F.R. Part 164, Subpart C; or (iii) Breach as defined at the Breach Notification Rule (collectively "Incident"). Business Associate's report will include (i) any available information that Covered Entity would otherwise be required to include in a notification to the Individual under 45 C.F.R. Part 164.404(c) or under any other applicable HIPAA provision or State law, and (ii) such other information, as may be otherwise required by law and/or reasonably requested by Covered Entity.
- 2.3.14. Health Information Policies and Procedures:** When performing under the Supply Agreement, Business Associate will comply with Covered Entity's vendor policies and procedures pertaining to health information and confidentiality of Covered Entity's PHI as published at <https://www.davita.com/about/vendor-information>.
- 2.3.15. Security Rule Obligations:** In addition to complying with Covered Entity's policies and procedures as provided in Section 2.3.14, Business Associate will comply with all aspects of the Security Rule and the HITECH Act, including (i) implementing Safeguards (including written

policies and procedures) that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the Security Rule and the HITECH Act and (ii) developing and implementing all required policies and procedures.

2.3.15.1. Addressable Specifications: Where the Security Rule categorizes an implementation specification as “Addressable,” Business Associate may analyze whether in Business Associate’s environment such implementation specification constitutes a reasonable and appropriate safeguard that is likely to contribute to protecting Covered Entity PHI. Business Associate shall have the reasonable discretion, based on that analysis, to either: (i) implement the implementation specification as set forth in the Security Rule; or (ii) document why Business Associate has determined that implementation of specification as set forth in the Security Rule is not reasonable and appropriate and implement an equivalent alternative measure that will adequately protect Covered Entity PHI.

2.3.15.2. Breach of Obligations Relating to Security Standards: In the event that Business Associate breaches any of its covenants and obligations under this Section 2.3.15, Covered Entity may, in addition to any other remedies, prohibit Business Associate from receiving Covered Entity PHI until such breach is remedied to Covered Entity’s satisfaction.

2.3.16. Compliance with Law: During the term of this Agreement, Business Associate shall comply with all applicable federal, state and local laws, rules and regulations pertaining to patient records and the confidentiality of patient information, including PHI. To the extent Business Associate is to carry out Covered Entity’s obligation under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity.

2.3.17. Mitigation: Business Associate will take all reasonable and necessary steps, in accordance with Covered Entity’s instructions, to negate any known harmful effect resulting from Business Associate’s use or disclosure of Covered Entity PHI in violation of this Agreement.

3. OBLIGATIONS OF COVERED ENTITY

3.1. Restrictions Requests and Confidential Communications: Covered Entity will notify Business Associate, in writing, of any agreement Covered Entity makes regarding any restriction or requirement for confidential communication (including any changes or revocation of such restriction agreement or confidential communication requirement), with respect to the use or disclosure of PHI pursuant to 45 C.F.R. § 164.522, to the extent that such restriction agreement or confidential communication requirement may affect Business Associate’s use or disclosure of Covered Entity PHI in performing under the Supply Agreement.

3.2. Safeguards: Covered Entity will: (i) employ appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Business Associate pursuant to this Agreement and the Supply Agreement, in accordance with the standards and requirements of HIPAA, the Privacy Rule and Security Rule, until such PHI is received by Business Associate; (ii) inform Business Associate of any consent or authorization, including any changes in or withdrawal of any such consent or authorization, provided to Covered Entity by an Individual pursuant to 45 C.F.R. § 164.506 or § 164.508;

and (iii) permit Business Associate to make any use or disclosure of Covered Entity PHI required under 45 C.F.R. § 164.512.

4. RELATIONSHIP TO SUPPLY AGREEMENT

This Agreement is intended to supplement the Supply Agreement and should be construed to the maximum extent possible to give full effect to both agreements. Any provisions in the Supply Agreement relating to (i) indemnification, (ii) limitations of liability (including any limits on the ability to recover consequential damages), (iii) choice of law, and (iv) dispute resolution shall apply equally to this Agreement and are incorporated herein by reference. In the event of an unavoidable conflict, the terms of this Agreement shall take precedence over the conflicting term(s) in the Supply Agreement.

5. TERM AND TERMINATION

5.1. Term: This Agreement shall commence on the Effective Date and remain in effect until terminated in accordance with Section 5.2.

5.2. Termination:

5.2.1. This Agreement will terminate automatically upon the termination or expiration of the Supply Agreement.

5.2.2. Covered Entity may terminate this Agreement for Business Associate's material breach, where such breach is not corrected to the reasonable satisfaction of Covered Entity by Business Associate within thirty (30) days of receiving Covered Entity's notice of breach.

5.3. Effect of Termination: Upon termination of this Agreement, Business Associate shall return or destroy all Covered Entity PHI. In the event Business Associate determines (and Covered Entity agrees) that return or destruction is not feasible, Business Associate will extend the protections required in this Agreement to the Covered Entity PHI and limit further uses and disclosures to only those purposes that make the return or destruction of the information infeasible.

5.4. Survival: The terms of this Agreement shall continue to apply with regard to any Covered Entity PHI that Business Associate retains following the termination of this Agreement. To the extent that Business Associate does not retain any Covered Entity PHI post termination, the provisions of this Agreement shall survive as necessary to ensure each party's continued compliance with HIPAA or applicable analogous state laws.

6. MISCELLANEOUS

6.1. Amendment: No modification of this Agreement will be effective unless made in writing signed by each party. Each party will cooperate reasonably to amend this Agreement in the event that such amendment is necessary for Covered Entity and/or Business Associate to comply with any new final regulation or amendment to final regulation promulgated by HHS during the term of this Agreement.

6.2. Notices: Any notices to be delivered hereunder shall be delivered in accordance with the notice provision(s) of the Supply Agreement; provided, that a copy of any notice to Covered Entity shall also

be delivered to: DaVita Inc., 2000 16th St. 12th Floor, Denver, CO 80202, Attention: Privacy Office. Notice shall be in writing and shall be deemed effective when personally delivered or, if mailed, three (3) calendar days after the date deposited in the United States mail, first class, postage prepaid, to the addressee at its current business address.

- 6.3. Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed an original and when taken together shall constitute one agreement.
- 6.4. Joint Preparation:** Each party: (i) has participated in the preparation of this Agreement; (ii) has read and understands this Agreement; and (iii) has been represented by counsel of its own choice in the negotiation and preparation of this Agreement, and (iv) represents that this Agreement is executed voluntarily and should not be construed against any party solely because such party drafted some or all of this document.
- 6.5. Severability:** Whenever possible, each provision of this Agreement shall be interpreted in such manner to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision in any other jurisdiction, but this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.
- 6.6. Waiver:** Any waiver of rights under this Agreement must be in writing, signed by the waiving party. Any such waiver is limited to its express terms. Waivers will not be implied from any action or inaction of a party.
- 6.7. Entire Agreement:** This Agreement supersedes any and all prior business associate agreements and understandings relating to its subject matter, whether oral or written, between the parties.
- 6.8. Independent Contractor:** Nothing in this Agreement shall be deemed or construed to create, any relationship between the parties hereto other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement, or to create any partnership, joint venture, legal association, or other operating relationship other than that of independent contractors. The governing bodies of each party shall have exclusive control of the policies, management, assets, and affairs of their respective organization.

IN WITNESS WHEREOF, the parties hereto have caused this Business Associate Agreement to be executed and delivered as of the Effective Date.

COVERED ENTITY:

BUSINESS ASSOCIATE:

BY: _____

BY: _____

ITS: _____

ITS: _____

DATE: _____

DATE: _____

