

BUSINESS ASSOCIATE AND CONFIDENTIALITY AGREEMENT

Customer (“**Covered Entity**”) and **eVisit, LLC** (“**eVisit**” or “**Business Associate**”) hereby enter into this Business Associate And Confidentiality Agreement (“**BAA**”).

Recitals

A. Covered Entity has retained eVisit to provide certain products and services (the “Services”), as set forth in the Subscription Services Agreement, Professional Services Agreement and Service Level Agreement in place between the parties (collectively, the “**Services Agreement**”).

B. The Parties’ performance under the Services Agreement may or will require Covered Entity to disclose and/or provide to Business Associate private and/or protected health and/or medical information as defined under, and governed by, applicable state law and Individually Identifiable Health Information and/or Electronic Protected Health Information as defined in the Health Insurance Portability and Accountability Act (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (“HITECH”), and/or regulations promulgated under such laws (state law, HIPAA, and HITECH are hereafter referred to collectively as “Privacy Laws”) and may or will require eVisit to receive, access, review, maintain, retain, modify, record, store, forward, produce, hold, use, create, disclose, and/or destroy such information (the “PHI”).

C. eVisit’s performance of the Services may give rise to certain legal obligations under Privacy Laws and eVisit may be considered a “business associate” and Covered Entity may be a “covered entity” as those terms are defined in 45 C.F.R. § 160.103.

Accordingly, the parties hereto (“Parties”) agree to the terms and conditions set forth below:

Terms of Business Associate Agreement

1. PERFORMANCE AND COMPLIANCE WITH LAW. The Parties will work together in good faith to determine applicability of Privacy Laws, to comply with applicable Privacy Laws, and to amend this BAA as necessary for Covered Entity and Business Associate to comply with applicable Privacy Laws, as modified and/or supplemented from time to time.

2. INTERPRETATION. Any ambiguity herein must be resolved in favor of a meaning that permits both Covered Entity and Business Associate to comply with applicable Privacy Laws, consistent with the Services Agreement. Capitalized terms not specifically defined in this BAA have the meanings assigned to them under 45 C.F.R. Parts 160, 162, and 164.

3. OWNERSHIP OF PHI. The PHI, and all information provided to, accessed, created, used, and/or maintained under this BAA is, and will remain at all times, the property of Covered Entity as between Covered Entity and Business Associate. This BAA will not apply to de-identified PHI.

4. PRIVILEGES AND PROTECTIONS. This BAA does not constitute or evidence a waiver of, nor does it amend, the attorney-client privilege, the attorney work-product doctrine, and/or any other applicable privileges or protections.

5. BUSINESS ASSOCIATE'S OBLIGATIONS.

5.1 Handling of the PHI and Safeguards. Business Associate agrees to prevent access, use and/or disclosure of PHI other than as permitted or required by this BAA and/or applicable Privacy Laws, and will implement and use, at all times, appropriate administrative, physical and technical safeguards to (i) prevent access, use or disclosure of PHI other than as permitted by this BAA and/or Privacy Laws; and (ii) reasonably and appropriately protect the confidentiality, integrity, security, and availability of PHI.

5.2 Minimum Necessary Use and Disclosure. Business Associate will determine the amount of PHI necessary for performance of the Services and will make reasonable efforts to limit the receipt, use, and disclosure of PHI to the minimum necessary as required by the Privacy Laws.

5.3 Management and Administration. In using and/or disclosing PHI for management and administrative purposes, Business Associate will comply with all applicable Privacy Laws and with Covered Entity's obligations under subpart E of 45 CFR Part 164.

5.4 Disclosures to Subcontractors and/or Third Parties. Business Associate shall ensure that all representatives, subcontractors, persons and/or entities (other than entities that are merely conduits) to whom Business Associate discloses or provides the PHI execute a written Business Associate Agreement, as required under the Privacy Laws, in which such third persons and/or entities expressly agree to the same restrictions and conditions that apply to Business Associate hereunder, to the extent required by Privacy Laws. If a Business Associate Agreement is not required by the Privacy Laws, Business Associate shall obtain reasonable assurances from all persons and entities who have access to or are recipients of the PHI that: (i) the PHI will be held confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the third party; and (ii) the third party will promptly notify Business Associate of any Compromise of PHI, and Business Associate will, in turn, notify Covered Entity.

5.5 Access to, or Amendment of, PHI. To the extent Business Associate maintains any PHI in a Designated Record Set, Business Associate agrees:

(a) to provide access to the PHI in a Designated Record Set to authorized individuals as required by Privacy Laws and in the time, manner, and format designated by such individuals to the extent required by Privacy Laws; and

(b) to make any amendment(s) to PHI in a Designated Record Set as requested by Covered Entity and/or authorized individuals pursuant to 45 C.F.R. § 164.526.

5.6 Restrictions on PHI. Business Associate will comply with any patient restrictions on the Use and Disclosure of PHI reasonably requested by Covered Entity under Section 6.2 below.

5.7 Reporting of Violations and Security Incidents.

Business Associate will promptly report to Covered Entity any impermissible use or disclosure under Privacy Laws that compromises the security or privacy of the PHI (“Breach”) and any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system that does not compromise the security or privacy of the PHI (“Security Incidents”). Notice is hereby deemed provided, and no further notice will be given, with respect to routine unsuccessful attempts at unauthorized access to ePHI such as pings and other broadcast attacks on firewalls, denial of service attacks, failed login attempts, and port scans. Business Associate will identify and respond internally to suspected or known Security Incidents, and will mitigate, to the extent practicable, their harmful effects, document their outcomes, and provide such documentation to Covered Entity upon request.

The Parties will meet and confer in good faith before notifying affected individuals and/or commencing any legal action regarding any suspected or actual Breach or Security Incident and/or breach of this BAA, and shall comply with applicable Privacy Laws regarding the need for and nature of any notification.

If the Parties are unable to agree during their meet and confer, Business Associate will not be responsible for any notification obligations under Privacy Laws, and specifically, without limitation, obligations under section 13402 of HITECH.

5.8 Accounting of PHI Disclosures. At the request of Covered Entity, Business Associate will document and report to Covered Entity all disclosures of PHI that are required for Covered Entity to provide an accounting under 45 C.F.R. § 164.528 and/or the Privacy Laws. If an individual contacts Business Associate directly for such an accounting, Business Associate will direct the individual to contact Covered Entity.

5.9 Audits and Inspections. Business Associate will make its internal practices, books, and such records as are not protected by applicable legal privilege or work product protection relating to the use, disclosure, and/or compromise of PHI available to Covered Entity to determine compliance with applicable Privacy Laws and this BAA, and to the Secretary of the United States, Department of Health and Human Services, and/or other authorized lawful authority as required by law or authorized by Covered Entity in writing.

5.10 Prohibition on Sale of PHI and use of PHI for Marketing. Business Associate will not directly or indirectly receive remuneration in exchange for any PHI, and will not use or disclose PHI for Fundraising and/or Marketing purposes, except as requested by the Services Agreement or with prior written consent of Covered Entity and in accordance with applicable Privacy Laws.

6. COVERED ENTITY’S OBLIGATIONS.

6.1 Authorizations. Covered Entity will obtain all consents and authorizations necessary and/or required by law for both parties to perform under the Services Agreement, including Business Associate's communications with patients on Covered Entity's behalf if applicable, and for both parties to fulfill their obligations under applicable Privacy Laws and this BAA.

6.2 Restrictions and Revocations. Covered Entity will promptly notify Business Associate in writing of any patient-requested restrictions, changes to, or revocation of, consent and/or authorization to use and/or disclose PHI that may affect Business Associate's ability to perform its obligations under this BAA.

6.3 Notice of Privacy Practices. Covered Entity will promptly provide Business Associate a copy of its Notice of Privacy Practices ("Notice") under the Privacy Laws, including without limitation 45 C.F.R. § 164.520, and any changes to the Notice that may affect Business Associate's use or disclosure of PHI or performance of this BAA.

6.4 Accounting of PHI Disclosures. Covered Entity will include in individual accountings requested under the Privacy Laws, including without limitation, 45 C.F.R. § 164.528, any disclosures by Business Associate.

6.5 Meet and Confer. Upon any suspected or actual Breach, unauthorized disclosure of the PHI or breach of this BAA, Covered Entity will meet and confer in good faith with Business Associate before notifying affected individuals and/or commencing any legal action.

7. TERM AND TERMINATION.

7.1 Term. The term of this BAA will commence upon receipt by Business Associate of any PHI or the date set forth below, whichever is earlier, and will terminate upon discharge of Business Associate's obligations under the Services Agreement and this BAA, including the obligations set forth in Section 7.2 below, and/or performance of the Services.

7.2 Termination Upon Bankruptcy. In the event of the filing of a petition in voluntary bankruptcy or an assignment for the benefit of creditors by a Party, or upon other action taken or suffered, voluntarily or involuntarily, under any federal or state law for the benefit of debtors by the Party, except for the filing of a petition in involuntary bankruptcy against the Party which is dismissed within thirty (30) days thereafter, the other Party may give notice of the immediate termination of this BAA.

7.3 Termination Without Cause. Either Party may terminate this BAA at any time without cause by providing the other Party with thirty (30) days prior written notice.

7.4 Breach. If either party hereto breaches its obligations under this BAA, the non-breaching party will provide the other with notice and a thirty (30) day period to cure the breach. If the breaching party fails to cure the breach or cure is not possible within thirty (30) days, the non-breaching party may terminate this BAA immediately upon written notice and without further legal action or declaration.

7.5 Effect of Termination. Upon termination of this BAA, at the request of Covered Entity, Business Associate will return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity, provided, however, that in the event that Business Associate determines that returning or destroying the PHI is infeasible, and/or the Privacy Laws require or recommend that Business Associate maintain records containing PHI, Business Associate will not return or destroy the PHI, but will extend the protections of this BAA to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible or contrary to the Privacy Laws, for so long as Business Associate maintains such PHI. Return or destruction of PHI generally will not be feasible, as applicable rules of professional conduct and/or professional responsibility and/or other state and federal laws require or recommend that Business Associate maintain records of the services provided and otherwise relating to legal representation of its clients.

8. MISCELLANEOUS.

8.1 Entire Agreement. This BAA and the Services Agreement, the consistent terms of which are incorporated herein, constitute the entire agreement between the Parties and supersede all prior negotiations, discussions, representations, or proposals, whether oral or written, unless expressly incorporated herein, related to the subject matter of this BAA. Unless otherwise expressly provided herein, this BAA may not be modified unless in writing signed by the duly authorized representatives of the Parties.

8.2 Severability. If any provision of this BAA or part thereof is found to be invalid, the remaining provisions will remain in full force and effect.

8.3 Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking, or condition of this BAA will not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the Parties to this BAA.

8.4 No Third-Party Beneficiaries. There are no third-party beneficiaries to this BAA. Business Associate's obligations are to Covered Entity only.

8.5 Successors and Assigns. This BAA will inure to the benefit of, and be binding upon, the successors and assigns of the Parties. However, this BAA is not assignable by any party without the prior written consent of the other Parties.

8.6 Dispute Resolution. If at any time during or after the term of this BAA either party hereto believes that a dispute exists between them, then the Parties agree that they shall promptly meet and confer in good faith to attempt to resolve such dispute before resorting to arbitration or court action. The Parties further agree that if they are unable to informally resolve any dispute between them or arising out of or relating to this BAA within thirty (30) days, then the dispute shall be submitted for resolution exclusively through confidential, binding arbitration, instead of through trial by court or jury, in accordance with the commercial, expedited dispute rules, then in effect, of either the Judicial Arbitration and Mediation Service ("JAMS") or the American Health Lawyers Association Alternative Dispute Resolution Service

(“AHLA”) as determined by Business Associate in its sole discretion. This BAA to arbitrate shall be specifically enforceable. Notwithstanding the foregoing each party shall bear its own attorney’s fees and costs.

8.7 Counterparts. This BAA may be executed in counterparts, by manual, electronic, or facsimile signature, each of which will be deemed an original and all of which together will constitute one and the same instrument.