

THIS BUSINESS ASSOCIATE AGREEMENT (the "BAA") is entered into on as of the date set out on the signature page below ("**Effective Date**") by and between **AlayaCare USA, Inc.** ("**Business Associate**"), and the customer of the AlayaCare electronic health record platform ("**Covered Entity**") as set out on the signature page below. This BAA adds to and clarifies any current or future agreements for services entered into between Business Associate and Covered Entity which involve the creation, use, receipt, or disclosure of PHI (the "**Agreements**").

Pursuant to the Agreements, Business Associate performs functions or activities on behalf of Covered Entity involving the use and/or disclosure of protected health information ("**PHI**") received from, or created or received by, Business Associate on behalf of Covered Entity. Therefore, Business Associate agrees to the following terms and conditions set forth in this BAA.

1. **Definitions and Regulatory References.** For purposes of this BAA, the terms used herein, whether or not capitalized, unless otherwise specifically defined, shall have the same meanings as used in the Health Insurance Portability and Accountability Act of 1996, and any amendments or implementing regulations ("**HIPAA**", inclusive of the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and 164), and the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009), and any amendments or implementing regulations ("**HITECH**"). A reference in this BAA to any provision of a law or regulation means the provision as then in effect, amended, or implemented via regulation.

2. **Compliance with Applicable Law.** The parties acknowledge and agree that Business Associate shall comply with its obligations under this BAA and with all obligations of a business associate under HIPAA, HITECH and other related laws and regulations, as they exist at the time this BAA is executed and as they are amended, for so long as this BAA is in place.

Pursuant to HITECH §§ 13401(a) and 13404(a) and the HIPAA implementing regulations, the provisions of HITECH that impose requirements and standards on covered entities with respect to security and privacy shall also be applicable to Business Associate and shall be incorporated into this BAA. All other provisions of HITECH that are applicable to Business Associate and its relationship with Covered Entity under this BAA and the Agreement shall be incorporated into this BAA.

3. **General Limitation on Uses and Disclosures of PHI.** Business Associate shall not use or disclose PHI in any manner that is not permitted or required by the Agreement, this BAA or by law. Business Associate shall also not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 of HIPAA if done by Covered Entity, except Business Associate may use or disclose PHI for Business Associate's own management and administration and legal responsibilities or for data aggregation services.

4. **Permissible Use and Disclosure of Protected Health Information.** Business Associate may only use and disclose PHI as permitted or required by the Agreement, this BAA or by law.

5. **Uses and Disclosures for Management and Administration.** Business Associate may also use and disclose PHI: (i) for its own proper management and administration, including managing the effectiveness of its products and services and to provide updates and additional features and functions; (ii) to carry out its legal responsibilities; and (iii) for backup and disaster recovery purposes. If Business Associate discloses PHI to a third party for either above reason, unless such disclosure is required by law, prior to making any such disclosure, Business Associate must obtain: (a) reasonable written assurances from the receiving party that such PHI will be held and remain confidential and be used and further disclosed only as required by law or for the purposes for which it was disclosed to such receiving party; and (b) an agreement from such receiving party to immediately notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been compromised.

6. **Data Aggregation Services.** Business Associate may also use and further disclose PHI to provide data aggregation services as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

7. **De-Identified Data.** Business Associate may also use PHI to de-identify the PHI in accordance with 45 C.F.R. §§ 164.502(d) and 164.514(a)-(c).

8. **Minimum Necessary.** All uses and disclosures of, and requests by, Business Associate, for PHI are subject to the minimum necessary rule of the HIPAA Privacy Rules.

9. **Required Safeguards to Protect PHI.** Business Associate agrees that it will implement appropriate safeguards in accordance with the HIPAA Privacy and Security Rules to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this BAA. In doing so, without limitation, Business Associate shall comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI.
10. **Reporting of Improper Uses and Disclosures of PHI and Security Incidents.** Business Associate shall promptly notify in writing as soon as possible, but in no event more than thirty (30) calendar days of any security incident, or any use or disclosure of PHI which is not provided for in this BAA or is otherwise a violation of HIPAA, of which it becomes aware. This provision applies regardless of whether such unauthorized use or disclosure was by Business Associate, its officers, directors, employees, agents, subcontractors, or by any third party. Notwithstanding the preceding, the parties acknowledge and agree that this section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to Covered Entity shall be required. "**Unsuccessful Security Incidents**" shall include, but not be limited to, pings (*i.e.*, a request-response utility used to determine whether a specific Internet Protocol [IP] address or host exists or is accessible) and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized acquisition, access, use or disclosure of Personal Health Information.
11. **Reporting of Breaches of Unsecured PHI.** Business Associate shall promptly notify Covered Entity in writing as soon as possible, but in no event more than thirty (30) calendar days of any Breach of Unsecured PHI, all in accordance with 45 C.F.R. §§ 164.400-414.
12. **Mitigation of Harmful Effects.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect of an unauthorized use or disclosure of PHI by Business Associate in violation of the requirements of this BAA or HIPAA.
13. **Business Associate Agreements Required with Third Parties.** Business Associate shall enter into a written agreement with any agent or subcontractor of Business Associate that will have access to PHI, or who will create, receive, maintain, or transmit PHI on behalf of Business Associate. Pursuant to such written agreement and 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), the agent or subcontractor shall agree to be bound by the same restrictions, terms, conditions, and requirements that apply to Business Associate under this BAA with respect to such PHI.
14. **Access to Information.** Promptly upon a request by Covered Entity, Business Associate shall make available PHI maintained by Business Associate in a Designated Record Set to Covered Entity (or to the individual requestor if directed by Covered Entity) as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524. In the event that any individual delivers directly to Business Associate a request for access to PHI, Business Associate shall promptly forward such request to Covered Entity. Unless otherwise required by law, the term "**Designated Record Set**," for the purposes of this BAA, shall not include any information in the possession of Business Associate that is the same as information in the possession of Covered Entity (information shall be considered the same information even if the information is held in a different format, medium or presentation or it has been standardized).
15. **Availability of PHI for Amendment.** Promptly upon the receipt of a request from Covered Entity, Business Associate shall make any amendment(s) to PHI maintained by Business Associate in a Designated Record Set as directed or agreed to by Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526. In the event any individual delivers directly to Business Associate a request for amendment to PHI, Business Associate shall promptly forward such request to Covered Entity for further direction.
16. **Access and Amendment Responsibility.** Pursuant to HIPAA, in the event that Business Associate maintains PHI in a Designated Record Set, the parties agree that Covered Entity will have the responsibility to handle, track and maintain records of all requests by individuals to access or amend such PHI. Business Associate, as a business associate of Covered Entity, will not have any responsibility to handle, track and maintain records of any such requests except as set forth above or in the Agreement.
17. **Documentation and Accounting of Disclosures.** Business Associate shall maintain and make available promptly upon a request by Covered Entity, the information required to provide an accounting of disclosures, to Covered Entity, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall promptly forward such request to Covered Entity. Unless otherwise

required by changed HIPAA regulations or the Agreement, in response to a request from an individual for an accounting of disclosures from an electronic health record maintained or hosted by Business Associate, Covered Entity shall provide the individual with an accounting of disclosures in accordance with HITECH § 13405(c)(3)(A). Unless otherwise required by changed HIPAA regulations or the Agreement Covered Entity may not elect to provide an individual with Business Associate's name and contact information under HITECH § 13405(c)(3)(B).

18. **Business Associate Performing Covered Entity's Obligations (If Applicable).** To the extent that Business Associate is required by this BAA or the Agreement to carry out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate must comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.

19. **Availability of Books and Records.** Business Associate hereby agrees to make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with HIPAA.

20. **Term and Termination.** The Term of this BAA shall be effective as of the effective date of the underlying Agreements and shall terminate on the termination or expiration of the last of the underlying Agreements or on the date Covered Entity terminates this BAA as authorized below, whichever is sooner.

Covered Entity may: (i) immediately terminate this BAA if Covered Entity reasonably determines that Business Associate has violated a material term of HIPAA or this BAA; or (ii) at Covered Entity's option, Covered Entity may permit Business Associate to cure or end any such violation within the reasonable period of time specified by Covered Entity.

21. **Effect of Termination of BAA.** Upon the termination or expiration of this BAA for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall do the following:

- (a) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities or for which it is not feasible for Business Associate to return or destroy, unless said information has been de-identified and thus is no longer PHI. The parties agree that the return or destruction of PHI received from or created or received by Business Associate on behalf of the Covered Entity in any format other than that in which Business Associate originally received such PHI, including pooled or aggregated data, is not feasible and that such PHI must be retained by Business Associate to defend its work product and for future audits (and for other reasons which make returning the same infeasible);
- (b) Return to Covered Entity, or, if agreed to by Covered Entity, destroy, other remaining PHI that the Business Associate still maintains in any form, recorded on any medium, or stored in any storage system;
- (c) Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this **Section**, for as long as Business Associate retains the PHI;
- (d) Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set forth in this BAA which applied prior to termination; and
- (e) Return to Covered Entity or (if agreed by Covered Entity) destroy the PHI retained by Business Associate when it is feasible to do so and the PHI is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

Business Associate shall remain bound by the provisions of this BAA which shall survive after termination or expiration of the Agreements or BAA.

22. **Covered Entity Obligations.**

- (a) Covered Entity shall notify Business Associate of any limitations in the notice of privacy practices of Covered Entity under 45 C.F.R. § 164.520 to the extent that such limitations may affect Business Associate's use or disclosure of PHI.
- (b) Covered Entity shall notify Business Associate of any changes in or revocation of the permission by an individual to use or disclose his or her PHI to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (c) Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- (d) Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except that Business Associate may use or disclose PHI for data aggregation or management and administration and legal responsibilities of Business Associate.

23. **Third Party Rights.** The terms of this BAA do not grant any rights to any parties other than Business Associate and Covered Entity.

24. **Independent Contractor Status.** Business Associate is an independent contractor of Covered Entity and shall not be considered an agent of Covered Entity.

25. **Changes in the Law.** The parties agree that, with no further action required by the parties, this BAA shall be deemed automatically amended to include and incorporate amendments or revisions to HIPAA and/or HITECH so that the parties remain in compliance with such amendments or revisions. All references to regulations or provisions of HIPAA and/or HITECH shall be deemed to also refer to any amendment or revision thereto and/or to any successor regulation.

If as a result of any amendments or revisions to HIPAA and/or HITECH the parties determine that modifications to the terms of this BAA: (i) may not be deemed to be automatically incorporated into this BAA; and (ii) are strictly required by HIPAA or HITECH to be reduced to writing; the parties agree to take such action as is necessary to enter into a mutually acceptable amendment to this BAA that addresses solely the legal changes that are required to be reduced to writing. The parties agree that this BAA may only be modified by mutual written amendment signed by both parties to be effective on the date set forth in the amendment. Neither party has the right to unilaterally amend or alter the provisions of this BAA.

26. **Interpretation and Conflicts.** Any ambiguity in this BAA shall be interpreted to permit compliance with HIPAA and HITECH. If there is any direct conflict between the Agreement and this BAA, the terms and conditions of this BAA shall control to the extent of such conflict.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf by their duly authorized representatives, effective on the date first written above.



BUSINESS ASSOCIATE:

AlayaCare USA, Inc.

By: _____

Name: _____

Title: _____

COVERED ENTITY:

By: _____

Name: _____

Title: _____