



THIS BUSINESS ASSOCIATE AGREEMENT (the “**BAA**”) is entered into as of the date signed 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 between Business Associate and Covered Entity which involve the creation, use, receipt, or disclosure of PHI (the “**Agreements**”).

Pursuant to the Agreements, Business Associate may perform functions or activities on behalf of Covered Entity involving the use and/or disclosure of protected health information (as defined by HIPAA, “**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 Agreements, 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 use and disclose PHI as permitted or required by the Agreements, 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 but not limited to performing data analytics to evaluate how its products are used, to improve its products, 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 and Other Uses of PHI.** Business Associate may also use and further disclose PHI to provide data aggregation services and may disclose aggregated data derived from PHI 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). Business Associate may create Limited Data Sets ("**LDS**") from PHI. Business Associate may disclose the LDS for any purpose allowable by applicable law, rule and/or regulation. Business Associate will require the recipient of the LDS to enter into a Data Use Agreement specifying that the permitted uses and disclosures of the LDS are limited to the purpose of research, public health, or health care operations, and restrictions and/or guidelines on use of the LDS. Business Associate may use (but not disclose) PHI to identify patients/residents of Covered Entity who may be eligible for certain programs, including, but not necessarily limited to including savings programs, coupons, sampling, educational, safety, adherence or treatment support materials which Customer may choose to share with its patients/residents, and to provide notification of the same. Said notifications of potential eligibility are not a substitute for Covered Entity's professional medical judgment regarding the appropriateness of said programs for a patient/resident. Business Associate may receive remuneration in connection with presenting Covered Entity with patients'/residents' eligibility for said programs. Covered Entity acknowledges and agrees that Business Associate may engage in further data use/disclosure activities (to the extent permitted by law), and that such activities may not be explicitly described herein. Covered Entity agrees to the same, so long as Business Associate conducts its activities in accordance with law.

Covered Entity hereby grants to Business Associate a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid-up, sublicensable (through multiple tiers), transferable right and license to copy, distribute, display, create derivative works of, and otherwise use and commercialize the De-Identified Data for any purpose, including to combine and incorporate such De-Identified Data with or into other data and information, available, derived or obtained from other sources.

It is further acknowledged and agreed that, without the rights conferred in this **Section 7**, Business Associate would have to create a custom solution for Covered Entity, at significant additional cost, and that Business Associate would not have agreed to or entered into the Agreements or this BAA. All rights, title and interest in and to any De-Identified data, aggregated data, LDS data, or other data created by Business Associate is the exclusive property of Business Associate, which may use, disclose, market, license and sell such data for any legally allowable purpose, and without restriction. In many instances, such data is no longer PHI and is no longer subject to HIPAA. Further, it is explicitly acknowledged that Business Associate may receive any allowable remuneration in connection with the same.

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. Covered Entity requests that Business Associate only report successful security incident upon request by Covered Entity. Business Associate may fulfill such requests, if any, by creating a successful security incident reporting panel available to Covered Entity's administrators. 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, and which will not be logged on Business Associate's internal security incident reporting panel (if any). "***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. If any individual delivers directly to Business Associate a request for access to PHI, Business Associate shall promptly forward such request to Covered Entity. Covered Entity is responsible for handling all individual requests for access under 45 C.F.R. §164.524 (or pursuant to a subpoena from a representative of the patient). 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). Business Associate may charge Covered Entity a reasonable fee for such access.

15. **Availability of PHI for Amendment.** Promptly upon the receipt of a request from Covered Entity, Business Associate shall allow Covered Entity to make any amendments 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. Covered Entity is responsible for all amendments to PHI.
16. **Access and Amendment Responsibility.** Pursuant to HIPAA, if 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, and fulfil, 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, maintain records of, or fulfil, any such requests except as set forth above or in the Agreement. Business Associate is not responsible for fulfilling information requests, either at the request of the patient (e.g., a HIPAA right of access request), or in response to a subpoena or other legally compelled discovery. Covered Entity is responsible for all such information requests.
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 Agreements, 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 § 13405l(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 Agreements and shall terminate on the termination or expiration of the last of the 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 aggregated or 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 this 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. **BAA is Only Applicable if HIPAA is Implicated.** This BAA only applies to the extent that PHI, as defined by HIPAA, is received from, or created or received by, Business Associate on behalf of Covered Entity. If PHI is not involved, or the Agreements do not trigger a "Business Associate" relationship under HIPAA, neither HIPAA nor this BAA applies (though Business Associate may still make the data uses/disclosures described herein and under the Agreements).

26. **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.

27. **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 Agreements and this BAA, the terms and conditions of this BAA shall control to the extent of such conflict.