



HIPAA & HITECH BUSINESS ASSOCIATE AGREEMENT

(Health Insurance Portability and Accountability Act (HIPAA)
Health Information Technology for Economic and Clinical Health (HITECH))

This Business Associate Agreement (“BA Agreement”), effective on _____ supplements and is made a part of the Services Agreement (as defined below) by and between

_____ (“Covered Entity”) and **D.A.W. SYSTEMS, INC.** (ScriptSure), located at 585 Troy-Schenectady Road, Latham, NY 12110 “Business Associate”).

WITNESSETH

WHEREAS, Covered Entity and Business Associate wish to enter into this Business Associate Agreement in order for both parties to establish their respective compliance with the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and its regulations, as amended by the Health Information Technology for Economic and Clinical Health Act of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, Title XIII (2009) (“HITECH”) and its implementing regulations.

WHEREAS, Covered Entity and Business Associate are parties to the Services Agreement pursuant to which Business Associate provides certain services to Covered Entity. In connection with Business Associate’s services, Business Associate creates or receives Protected Health Information from or on behalf of Covered Entity, which information is subject to protection under the Federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (“HIPAA”), the HIPAA Privacy rule (Privacy rule), 45 CFR Parts 160 and 164, and the HIPAA Security Rule (Security Rule), 45 CFR Parts 160, 162 and 164, the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009 (the “HITECH Act”), and related regulations promulgated by the Secretary (“HIPAA Regulations”).

WHEREAS, Business Associate may receive or have access to PHI from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity, which PHI can be used or disclosed only in accordance with this Agreement and the standards established by HIPAA, the Privacy rule and the Security Rule, beginning as soon as practicable but in no event later than the effective date of the Security Rule.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the mutual promises and covenants set forth below, Covered Entity and Business Associate agree as follows:

I. DEFINITIONS:

Terms used, but not otherwise defined, in this BA Agreement shall have the same meaning given to those terms by HIPAA, the HITECH Act and HIPAA Regulations as in effect or as amended from time to time. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR Parts 160, 162 and 164:

- A. Business Associate shall have the meaning given to such term under the Privacy and Security Rules, including but not limited to, 45 CFR §160.103.
- B. Breach. “Breach” shall have the same meaning as the term “breach” in the HITECH Act, Section 13400(1). Breach is defined as the unauthorized acquisition, access, use, or disclosure of Protected Health Information (PHI) which compromises the security of privacy of such information.
- C. Covered Entity shall have the meaning given to such term under the Privacy and Security Rules, including, but not limited to, 45 CFR §160.103.
- D. Electronic Health Record. “Electronic Health Record” OR “EHR” shall have the same meaning as the term “electronic health record” in the HITECH Act, Section 13400(5).
- E. Electronic Protected Health Information. “Electronic PHI” shall have the same meaning as the term “electronic PHI” in 45 CFR § 160.103, limited to the information that Business Associate creates, receives, maintains, or transmits from or on behalf of Covered Entity.
- F. HIPAA shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- G. Individual. “Individual” shall have the same meaning as the term “individual” in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- H. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- I. Protected Health Information. “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. “Protected Health Information” or “PHI” means any information, transmitted or recorded in any form or medium; (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations at 45 CFR Parts 160, 162 and 164, including, but not limited to 45 CFR §164.501.
- J. Required By Law. “Required by Law” shall have the same meaning as the term “required by law” in 45 CFR § 160.103.
- K. Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
- L. Security Rule. “Security Rule” shall mean the Security Standards at 45 Part 160, 162 and Part 164.
- M. Services Agreement. “Services Agreement” shall mean any present End User License Agreement (EULA) or other future agreements, either written or oral, between Covered Entity and Business Associate under which Business Associate provides services to Covered Entity which involve the use or disclosure of PHI. The Services Agreement is amended by and incorporates the terms of this BA Agreement.

- N. Use. "Use" of PHI shall mean "the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information," as per 45 CFR 160.103
- O. Unsecured Protected Health Information. "Unsecured Protected Health Information" shall have the same meaning as the term "unsecured protected health information" in the HITECH Act, Section 13402(h)(1).

II. **STATED PURPOSES FOR WHICH BUSINESS ASSOCIATE AND COVERED ENTITY ARE PERMITTED TO USE AND DISCLOSE PHI AND OTHER OBLIGATIONS & ACTIVITIES:**

The Parties hereby agree that Business Associate shall be permitted to use and/or disclose PHI provided by or obtained on behalf of Covered Entity for the following stated purposes, except as otherwise limited in this Agreement. These uses and disclosures are within the scope of the Agreement. 45 CFR §164.502 and §164.504. Except as otherwise limited in this Agreement, Business Associate shall be permitted to use or disclose PHI provided by or obtained on behalf of Covered Entity to perform those functions, activities, or services for, or on behalf of, Covered Entity that are specified in a request, need or Statement of Work, provided that such use or disclosure would not violate the Privacy rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

- A. Use and Disclosure. Business Associate is permitted to use or disclose PHI if necessary for the proper management and administration of Business Associate or to carry out legal responsibilities of the Business Associate, except as otherwise limited in this Agreement. Business Associate agrees not to use or disclose PHI other than as permitted or required by EULA, Services Agreement, a work order, a Statement of Work, this BA Agreement or as Required By Law. Business Associate shall comply with the provisions of this BA Agreement relating to privacy and security of PHI and all present and future provisions of HIPAA, the HITECH Act as of its effective date and HIPAA Regulations that relate to the privacy and security of PHI and that are applicable to Covered Entity and/or Business Associate.
 - i. Business Associate may not use or disclose protected health information, except as permitted or required by this HIPAA or this Agreement.
 - i. Business associates: Permitted uses and disclosures. A business associate may use or disclose protected health information only as permitted or required by its business associate contract or other arrangement pursuant to § 164.504(e) or as required by law. The business associate may not use or disclose protected health information in a manner that would violate the requirements of HIPAA or if such uses or disclosures are permitted by its contract or other arrangement.
 - ii. A business associate is required to disclose protected health information:
 - 1. (i) When required by the Secretary under subpart C of part 160 of this subchapter to investigate or determine the business associate's compliance with this subchapter.
 - 2. To the covered entity, individual, or individual's designee, as necessary to satisfy a covered entity's obligations under § 164.524(c)(2)(ii) and (3)(ii) with respect to an individual's request for an electronic copy of protected health information.

- ii. Prohibited uses and disclosures by Business Associate:
 - i. Use and disclosure of genetic information for underwriting purposes
 - ii. Sale of protected health information:
 - 1. Except pursuant to and in compliance with § 164.508(a)(4), a Business Associate will not sell protected health information.
 - a. Sale of protected health information means Disclosure of PHI where business associate directly or indirectly receives remuneration from or on behalf of the recipient of the protected health information in exchange for the protected health information. Sale of protected health information does not include a disclosure of protected health information:
 - 1. For public health purposes pursuant to § 164.512(b) or § 164.514(e);
 - 2. For research purposes pursuant to § 164.512(i) or § 164.514(e), where the only remuneration received by the covered entity or business associate is a reasonable cost-based fee to cover the cost to prepare and transmit the protected health information for such purposes;
 - 3. For treatment and payment purposes pursuant to § 164.506(a);
 - 4. To or by Business Associate for activities that the BA undertakes on behalf of a covered entity, or on behalf of a business associate in the case of a subcontractor, pursuant to §§ 164.502(e) and 164.504(e), and the only remuneration provided is by the covered entity to the business associate, or by the business associate to the subcontractor, if applicable, for the performance of such activities;
 - 5. To an individual, when requested under § 164.524 or § 164.528;
 - 6. Required by law as permitted under § 164.512(a); and
 - 7. For any other purpose permitted by and in accordance with the applicable requirements of HIPAA, where the only remuneration received by Business Associate is a reasonable, cost-based fee to cover the cost to prepare and transmit the protected health information for such

purpose or a fee otherwise expressly permitted by other law.

- B. Disclosures to Business Associate. Business associate will appropriately safeguard and disclosed PHI.
- i. Business Associate may disclose protected health information to a business associate that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit protected health information on its behalf, if the business associate obtains satisfactory assurances, in accordance with § 164.504(e)(1)(i), that the subcontractor will appropriately safeguard the information. Business associate will document through a written contract or other written agreement or arrangement with the business associate that meets the applicable requirements of § 164.504(e).
- C. Deceased individuals. Business Associate will comply with any Covered Entity requests for PHI for a deceased individual for a period of 50 years following the death of the individual.
- i. Personal representatives. As specified in HIPAA, Business Associate will treat a personal representative as the individual for purposes of deceased individuals and disclosure of a deceased individuals PHI.
- D. Disclosures by whistleblowers and workforce member crime victims. Covered Entity or Business Associate is not considered to have violated the requirements of this subpart if a member of its workforce discloses protected health information, provided that:
- i. The workforce member or business associate believes in good faith that the covered entity or Business Associate has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services, or conditions provided by the covered entity potentially endangers one or more patients, workers, or the public; and the disclosure is to:
 - i. A health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of the covered entity or to an appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or misconduct by the Covered Entity; or
 - ii. An attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate with regard to the violated requirements.
 - ii. Disclosures by workforce members who are victims of a crime. A covered entity is not considered to have violated the requirements of this subpart if a member of its workforce who is the victim of a criminal act discloses protected health information to a law enforcement official, provided that:
 - i. The protected health information disclosed is about the suspected perpetrator of the criminal act; and
 - ii. The protected health information disclosed is limited to the information listed in § 164.512(f)(2)(i).
- E. Other Permitted Uses. Unless otherwise limited herein, Business Associate may: (a) perform data aggregation for the health care operations of Covered Entity; (b) as

requested by Covered Entity or authorized governmental agent, use, analyze, and disclose PHI in its possession for the public health activities and purposes set forth at 45 C.F.R. § 164.512(b); and (c) de-identify PHI in accordance with 45 C.F.R. § 164.514(b) and use or disclose de-identified information.

- i. Uses and disclosures to create de-identified information. A covered entity may use protected health information to create information that is not individually identifiable health information or disclose protected health information only to a business associate for such purpose, whether or not the de-identified information is to be used by the covered entity.
 - i. De-identified information is that which meets the specifications for de-identification under § 164.514(a) and (b) is considered not to be individually identifiable health information, i.e., de-identified. The requirements of this subpart do not apply to information that has been de-identified in accordance with the applicable requirements of § 164.514, provided that:
 1. Disclosure of a code or other means of record identification designed to enable coded or otherwise de-identified information to be re-identified constitutes disclosure of protected health information; and
 - a. If de-identified information is re-identified, a covered entity may use or disclose such re-identified information only as permitted or required by this subpart.
- F. Data Aggregation Services. Business Associate may also be permitted to use or disclose PHI to provide data aggregation services, as that term is defined by 45 CFR §164.501, if specific authorization is received from the Covered Entity.
- G. Minimum Necessary. Business Associate shall, to the extent practicable, use, disclose, or request only PHI that is contained in a Limited Data Set; or (b) Use, Disclose, or request only the minimum necessary amount of PHI to accomplish the intended purpose of such use, disclosure or request.
 - i. Minimum necessary does not apply to:
 - i. Disclosures to or requests by a health care provider for treatment;
 - ii. Uses or disclosures made to the individual, as permitted under paragraph by HIPAA or as required by law and HIPAA;
 - iii. Uses or disclosures made pursuant to an authorization under § 164.508;
 - iv. Disclosures made to the Secretary in accordance with subpart C of part 160 of HIPAA;
 - v. Uses or disclosures that are required by law, as described by § 164.512(a); and
 - vi. Uses or disclosures that are required for compliance with applicable requirements of HIPAA.
- H. Appropriate Safeguards. Beginning as soon as practicable, but in no event later than the effective date of the Security Rule, Business Associate shall establish and maintain appropriate safeguards to prevent any use or disclosure of PHI other than as provided for by this Agreement. Business Associate agrees to use appropriate safeguards to

prevent the use or disclosure of the PHI other than as provided for by this BA Agreement. Without limiting the generality of the foregoing sentence, Business Associate will:

- i. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI as required by the Security Rule;
 - ii. Ensure that any agent, including a subcontractor, to whom Business Associate provides Electronic PHI agrees to implement reasonable and appropriate safeguards to protect Electronic PHI; and
 - iii. Promptly report to Covered Entity any Security Incident of which Business Associate becomes aware. In addition, Business Associate agrees to promptly notify Covered Entity following the discovery of a Breach of Unsecured PHI. A Breach is considered “discovered” as of the first day on which the Breach is known, or reasonably should have been known, to Business Associate or any employee, officer or agent of Business Associate, other than the individual committing the Breach. Any notice of a Security Incident or Breach of Unsecured PHI shall include the identification of each Individual whose PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Security Incident or Breach as well as any other relevant information regarding the Security Incident or Breach.
- I. Reporting. Except as provided in 45 C.F.R. § 164.412, Business Associate agrees to promptly report to Covered Entity any use or disclosure of PHI or other Security Incidents or Breach of Unsecured PHI without unreasonable delay, but in no case later than ten (10) business days after the first day on which the Breach is known, or by the exercise of reasonable diligence would have been known, to Business Associate.
- i. Reporting will be in writing and will include, to the extent possible, known or available, the information required by 45 C.F.R. § 164.410.
- J. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its employees, officers or agents in violation of the requirements of this BA Agreement (including, without limitation, any Security Incident or Breach of Unsecured PHI). Business Associate agrees to reasonably cooperate and coordinate with Covered Entity in the investigation of any violation of the requirements of this BA Agreement and/or any Security Incident or Breach. Business Associate shall also reasonably cooperate and coordinate with Covered Entity in the preparation of any reports or notices to the Individual, a regulatory body or any third party required to be made under HIPAA, HIPAA Regulations, the HITECH Act as of its effective date, or any other Federal or State laws, rules or regulations, provided that any such reports or notices shall be subject to the prior written approval of Covered Entity.
- K. Subcontractors and Agents. Business Associate shall ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by, Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this BA Agreement to Business Associate with respect to such information.

- L. Access to Designated Record Sets. To the extent that Business Associate possesses or maintains PHI in a Designated Record Set, Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under HIPAA Regulations. If an Individual makes a request for access to PHI directly to Business Associate, Business Associate shall notify Covered Entity of the request within five (5) business days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual. Business Associate shall further conform with and meet all of the requirements of 45 CFR §164.524.
- M. Amendments to Designated Record Sets. To the extent that Business Associate possesses or maintains PHI in a Designated Record Set, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to HIPAA Regulations at the request of Covered Entity or an Individual, and in the time and manner designated by the Covered Entity. If an Individual makes a request for an amendment to PHI directly to Business Associate, Business Associate shall notify Covered Entity of the request within five (5) business days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual, in compliance with 45 CFR §164.526
- N. Access to Books and Records. Business Associate agrees to make its internal practices, books, and records relating the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary of Health and Human Services or designee for purposes of determining compliance with the HIPAA Privacy Regulations in a timely manner during business hours.
- O. Accountings. Business Associate agrees to document and maintain a record of all disclosures of PHI in accordance with 45 CFR §164.528. Such records shall include, for each disclosure, the date of the disclosure, the name and address of the recipient of the PHI, a description of the PHI disclosed, the name of the individual who is the subject of the PHI disclosed, the purpose of the disclosure, and shall include disclosures made on or after the date which is six (6) years prior to the request or April 14, 2003, whichever is later. Business Associate shall make such record available to the individual or the Covered Entity within ten (10) business days of a request for an accounting of disclosures. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA, HIPAA Regulations and the HITECH Act, as of its effective date.
- P. Requests for Accountings. Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by the Covered Entity, information collected in accordance with Section 2(i) of this BA Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA, HIPAA Regulations and the HITECH Act as of its effective date. If an Individual makes a request for an accounting directly to Business Associate, Business Associate shall notify Covered Entity of the request within ten (10) business days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual.

- Q. Services Agreement. Except as otherwise limited in this BA Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate HIPAA, HIPAA Regulations or the HITECH Act as of its effective date if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
- R. Use for Administration of Business Associate. Except as otherwise limited in this BA Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- S. Disclosure for Administration of Business Associate. Except as otherwise limited in this BA Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that (i) disclosures are Required by Law, or (ii) 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- T. Permissible Requests by Covered Entity. Except as set forth above, Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.
- U. Provision of Notice of Privacy Practices. Covered Entity shall provide Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as changes to such notice.
- V. Permissions. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI of which Covered Entity is aware, if such changes affect Business Associate's permitted or required uses and disclosures.
- W. Restrictions. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity 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.
- X. Provision of Notice of Privacy Practices. Covered Entity shall provide Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as changes to such notice.
- Y. Maintenance of PHI. Business Associate and its subcontractors or agents shall retain all PHI throughout the term of the Agreement and shall continue to maintain the information required under this Agreement for a period of six (6) years after termination of the Agreement, unless Covered Entity and Business Associate agree otherwise.
- Z. Mitigation Procedures. Business Associate agrees to establish and to provide to Covered Entity upon request, procedures for mitigating, to the maximum extent practicable, any harmful effect from the use or disclosure of PHI in a manner contrary to this Agreement or the Privacy Rule. 45 CFR §164.530(f). Business Associate further agrees to mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement or the Privacy rule.

- AA. Sanction Procedures. Business Associate agrees that it has a system of sanctions for any employee, subcontractor or agent who violates this Agreement or the Privacy rule.
- BB. Failure to Perform Obligations. In the event Business Associate fails to perform its obligations under this Agreement, Covered Entity may immediately discontinue providing PHI to Business Associate. Covered Entity may also, at its option, require Business Associate to submit to a plan of compliance, including monitoring by Covered Entity and reporting by Business Associate, as Covered Entity in its sole discretion determines to be necessary to maintain compliance with this Agreement and applicable law.

III. TERM AND TERMINATION

- A. This BA Agreement shall be effective as of the date of this BA Agreement and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, 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.
- a. Termination for Cause. Upon either Business Associate or Covered Entity's knowledge of a material breach or violation of the terms of this BA Agreement, the non-breaching party will:
- i. Provide a reasonable time of at least thirty (30) days for the breaching Party to cure the breach or end the violation. If breach is not cured or the violation is not ended within the time specified, the non-breaching party may immediately terminate: (A) this BA Agreement. ; (B) all of the provisions of the Services Agreement that involve the use or disclosure of PHI; and (C) such other provisions, if any, of the Services Agreement as Covered Entity designates in its sole discretion;
 - ii. Be able to immediately terminate, (if there has been a breach violation of a material term of this BA Agreement and cure is not possible): (A) this BA Agreement; (B) all of the provisions of the Services Agreement that involve the use or disclosure of PHI; and (C) such other provisions, if any, of the Services Agreement as Covered Entity designates in its sole discretion; or
 - iii. If neither termination nor cure are feasible, non-breaching party shall report the violation to the Secretary.
- b. Effect of Termination. Except as provided in Sections above, upon termination of this BA Agreement, for any reason:
- i. Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

- ii. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this BA 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.

IV. **Miscellaneous.**

- A. **Compliance with HIPAA Transaction Standards.** When providing its services and/or products, Business Associate shall comply with all applicable HIPAA standards and requirements (including, without limitation, those specified in 45 CFR Part 162) with respect to the transmission of health information in electronic form in connection with any transaction for which the Secretary has adopted a standard under HIPAA (“Covered Transactions”). Business Associate will make its services and/or products compliant with HIPAA’s standards and requirements no less than thirty (30) days prior to the applicable compliance dates under HIPAA. Business Associate represents and warrants that it is aware of all current HIPAA standards and requirements regarding Covered Transactions, and Business Associate shall comply with any modifications to HIPAA standards and requirements which become effective from time to time. Business Associate agrees that such compliance shall be at its sole cost and expense, which expense shall not be passed on to Covered Entity in any form, including, but not limited to, increased fees. Business Associate shall require all of its agents and subcontractors (if any) who assist Business Associate in providing its services and/or products to comply with the terms of this Section 7.
- B. **HIV/AIDS.** If HIV/AIDS information is to be disclosed under this Agreement, the Business Associate acknowledges that it has been informed of the confidentiality requirements of Public Health Law Article 27-F.
- C. **No Third Party Beneficiaries.** Nothing express or implied in this BA Agreement is intended or shall be deemed to confer upon any person other than Covered Entity and Business Associate, and their respective successors and assigns, any rights, obligations, remedies or liabilities.
- D. **Nature of Agreement.** Nothing in this BA Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates, or (ii) a relationship of employer and employee between the Parties. Business Associate is an independent contractor, not an agent, to Covered Entity and nothing contained in this BA Agreement shall be intended to expand the scope or nature of the relationship.
- E. **Regulatory References.** A reference in this BA Agreement to a section in HIPAA, HIPAA Regulations, or the HITECH Act means the section as in effect or as amended or modified from time to time, including any corresponding provisions of subsequent superseding laws or regulations.

- F. Amendment. The Parties agree to negotiate in good faith as is reasonably necessary to amend the BA Agreement from time to time in order that Covered Entity and Business Associate comply with the requirements of HIPAA, Public Law 104-191, the HIPAA Regulations, Breach Notification Rules, the HITECH Act and any current or future regulations promulgated thereunder. No amendments or modifications to the BA Agreement shall be effected unless executed by both parties in writing.
- G. Counterparts. This BA Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.
- H. Survival. The respective rights and obligations of Business Associate under Section 5(c) of this BA Agreement shall survive the termination of the Services Agreement or this BA Agreement.
- I. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HIPAA, HIPAA Regulations and the HITECH Act.
- J. Entire Agreement / Forum Selection. The terms of this BA Agreement are hereby incorporated into the Services Agreement. Except as otherwise stated above, in the event of a conflict between the terms of this BA Agreement and the terms of the Services Agreement, the terms of this BA Agreement shall prevail. The terms of the Services Agreement which are not modified by this BA Agreement shall remain in full force and effect in accordance with the terms thereof. Each party to this BA Agreement hereby agrees and consents that any legal action or proceeding with respect to this BA Agreement shall only be brought in the courts of the State where the Covered Entity is located in the County where the Covered Entity is located. The Services Agreement together with this BA Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein, and this BA Agreement supersedes and replaces any former business associate agreement or addendum entered into by the parties.

IN WITNESS WHEREOF, the parties have executed this BA Agreement as of the date above.

COVERED ENTITY: _____

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

BUSINESS ASSOCIATE: D.A.W. SYSTEMS, INC.

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____



CUSTOMER ACCONT #: _____ *Internal Use Only*
**THIS COMPLETED SIGNED BAA CAN BE EMAILED TO SALES@DAWSYSTEMS.COM
OR FAXED TO 518-533-3793**