

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“BAA”) governs Altera Digital Health Inc. (as successor to Allscripts Healthcare, LLC) (collectively, “Altera”) (and its agents’ and subcontractors’), use and disclosure of Protected Health Information (“PHI”) and implementation of safeguards for the security of Electronic PHI (“EPHI”) disclosed by \_\_\_\_\_ (“Client”) to Altera (collectively, the “Covered Conduct”), and enables both parties to establish their respective compliance with the requirements of the Health Insurance Portability and Accountability Act of 1996, 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 their respective implementing regulations (collectively, “HIPAA”).

### **1. Permitted Uses and Disclosures of Altera.**

- 1.1 *General Uses and Disclosures.* Altera agrees not to Use or Disclose PHI except (a) as permitted or required by this BAA or that certain written commercial agreement under which Altera is acting as a Business Associate of Client (the “Underlying Agreement(s)”) or (b) as permitted or required by law. Except for the purposes specified under Section 1.5 of this BAA, Altera may not Use or Disclose PHI in a manner that would violate HIPAA if done by Client.
- 1.2 *Performance of Services.* Altera may Use or Disclose PHI to (a) perform services under the Underlying Agreement(s) or (b) perform its obligations under this BAA.
- 1.3 *Performance of Client’s Obligations.* To the extent Altera is required by the Underlying Agreement(s) to carry out a Client’s obligation under HIPAA, Altera shall comply with the HIPAA requirements that apply to Client in the performance of such obligations.
- 1.4 *Minimum Necessary.* Altera shall Use, Disclose, or request only the minimum necessary amount of PHI to accomplish the intended purpose of such Use, Disclosure or request.
- 1.5 *Proper Management and Administration.* Altera may Use or Disclose PHI for the proper management and administration of Altera or to carry out the legal responsibilities of Altera in compliance with 45 C.F.R. § 164.504(e)(4)(ii).
- 1.6 *Other Permitted Uses.* Altera may: (a) perform data aggregation for the health care operations of Client; (b) Use and Disclose PHI if permitted by 45 C.F.R. § 164.512; and (c) de-identify PHI in accordance with 45 C.F.R. § 164.514(b) and use or disclose (and permit others to use or disclose) de-identified information on a perpetual, unrestricted basis.

### **2. Duties and Responsibilities of Altera**

- 2.1 *Safeguards.* Altera shall use appropriate safeguards to prevent the Use or Disclosure of PHI except as provided by this BAA, including appropriate Administrative, Physical, and Technical safeguards to protect the confidentiality, integrity and availability of any EPHI in compliance with the Security Rule.
- 2.2 *Reporting.* Altera shall report to Client without unreasonable delay (i) any improper or unauthorized Use or Disclosure of PHI or (ii) any Security Incident, in each case, that compromises Client’s PHI or EPHI of which Altera becomes aware. Altera hereby notifies Client of the ongoing existence and occurrence of Unsuccessful Security Incidents for which no additional report or notice to Client shall be required. For purposes of this BAA, “Unsuccessful Security Incidents” include activity such as pings and other broadcast attacks on Altera’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 Use or Disclosure of Client's electronic PHI.

- 2.3 *Mitigation.* Altera shall mitigate, to the extent practicable, any harmful effect that is known to Altera of a Use or Disclosure of PHI by Altera in violation of the requirements of this BAA.
- 2.4 *Agents and Subcontractors.* Altera shall ensure that any agent or subcontractor that accesses, creates, receives, maintains or transmits PHI on behalf of Altera, agrees to, in writing, the same restrictions and conditions that apply to Altera with respect to such PHI.
- 2.5 *Access and Availability of PHI for Amendment.* If Altera is required by the Underlying Agreement(s) to maintain Client's Designated Record Set, upon receipt of a reasonable advance written request from Client, Altera shall provide access to PHI and EPHI in a Designated Record Set to Client and incorporate any amendments of PHI and EPHI in a Designated Record Set that Client agrees to in accordance with 45 C.F.R. §§ 164.524 and 164.526, respectively.
- 2.6 *Audit and Inspection.* Altera shall make internal practices, books, and records relating to the Use and Disclosure of PHI available to the Secretary in a time and manner reasonably designated by the Secretary during Altera normal business hours, for purposes of the Secretary determining Client's compliance with HIPAA.
- 2.7 *Accounting of Disclosures.* Altera shall document any Disclosures of PHI by Altera and information related to such Disclosures, as would be required for Client to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Altera agrees to provide to Client information collected in accordance with this Section within 15 days of receipt of a reasonable written request by Client in connection with an accounting request from an Individual.
- 2.8 *Breach Notification.* Except as provided in 45 C.F.R. § 164.412, Altera will give Client notice of any Breach of Unsecured PHI without unreasonable delay, but in no case later than 15 business days after discovery of the Breach. The notice will include, to the extent possible, known or available, the information required by 45 C.F.R. § 164.410.

### **3. Duties and Responsibilities of Client.**

- 3.1 *Client Obligations.* Client shall not request Altera to use or disclose PHI in any manner that would not be permissible under HIPAA. Client represents and warrants that it has obtained all consents, authorizations, or other permissions necessary under HIPAA. Client agrees to take all reasonable and appropriate steps to ensure compliance with its role as a Covered Entity, including security measures such as firewalls, patch installations, and encryption.
- 3.2 *Notice of Privacy Practices.* Client shall notify Altera of any limitation(s) in Client's notice of privacy practices in accordance with 45 C.F.R. § 164.520 to the extent that such limitation may affect Altera's Use or Disclosure of PHI.
- 3.3 *Changes to Authorization.* Client shall notify Altera of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI to the extent that such changes may affect Altera's Use or Disclosure of PHI.
- 3.4 *Restrictions on Consent.* Client shall notify Altera of any restriction to the Use or Disclosure of PHI to which Client has agreed in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Altera's Use or Disclosure of PHI.

### **4. Indemnification.**

- 4.1 *Indemnification.* Subject to the Indemnification Procedures in Section 4.2 below, each party (as "Indemnifying Party") agrees to defend the other ("Indemnified Party"), at Indemnifying Party's expense, against any claims and lawsuits asserted by a third party ("Claim") and indemnify and hold harmless the

Indemnified Party against any and all (a) incurred damages, liabilities, judgments, costs and expenses resulting from a corresponding Claim, actually and finally awarded to such third party by a court or arbitration panel or agreed to in writing by Indemnifying Party in a settlement, and (b) reasonable and necessary out-of-pocket expenses in connection with notifications required by law, in each case of (a) and (b) above, if and to the extent such Claim arises from the unauthorized use or disclosure of PHI and is solely attributable to a material breach of this BAA by Indemnifying Party.

4.2 *Indemnification Procedures.* Indemnified Party's right to defense and/or indemnification hereunder is conditioned upon the following: prompt written notice to Indemnifying Party and demand for payment of any Claim for which indemnity and/or defense is sought; full control of the selection of counsel, investigation, preparation, defense, and settlement thereof by Indemnifying Party; reasonable cooperation by the Indemnified Party, at Indemnifying Party's request, in the defense of the Claim. Indemnified Party shall have the right to participate in the defense of a Claim by Indemnifying Party with counsel of the Indemnified Party's choice at the Indemnified Party's expense. Indemnifying Party shall not, without the prior written consent of Indemnified Party, settle, compromise or consent to the entry of any judgment that imposes any material obligation on Indemnified Party that Indemnifying Party does not discharge; such consent not to be unreasonably withheld by Indemnified Party.

4.3 *Limitation of Liability.* An Indemnified Party's sole and exclusive remedy and Indemnifying Party's sole liability for any breach of this BAA or negligent acts or wrongful omissions by Indemnifying Party are the remedies set forth in this Section. Excluding Indemnifying Party's indemnification obligation in Section 4.1, in no event shall either party be liable to the other under any contract, negligence, strict liability or other legal or equitable theory for any special, incidental, consequential, exemplary, punitive, or other indirect damages of any character, including, but not limited to, loss of revenue or profits or lost business, even if the party has been advised of the possibility of such damages. **NOTWITHSTANDING ANYTHING ELSE, THE MAXIMUM, CUMULATIVE, AGGREGATE LIABILITY OF ALTERA AND ITS SUBCONTRACTORS OR AGENTS FOR ALL LIABILITY, LOSS, AND DAMAGES ARISING HEREUNDER OR ARISING OUT OF OR ASSOCIATED WITH THIS BAA SHALL NOT EXCEED THE AMOUNTS PAID BY CLIENT TO ALTERA FOR THE APPLICABLE SOFTWARE PRODUCTS OR SERVICES UNDER THE UNDERLYING AGREEMENT DURING THE PRECEDING TWELVE (12) MONTHS. THE FOREGOING LIMITATION OF LIABILITY SHALL REMAIN IN FULL FORCE AND EFFECT REGARDLESS OF WHETHER CLIENT'S REMEDIES HEREUNDER HAVE FAILED THEIR ESSENTIAL PURPOSE.**

## 5. Termination

5.1 *Termination for Cause.* Upon either Party's knowledge of a material breach of this BAA by the other Party, the non-breaching Party (i) may provide written notice of the existence of such material breach and, if it desires to preserve the right to terminate this BAA for such material breach, specify in such breach notice a reasonable time frame of at least 60 days for the breaching Party to cure the breach; (ii) if such time frame is so specified, may immediately terminate this BAA upon further written notice if the breaching Party does not cure the breach or end the violation within such time frame; or (iii) immediately terminate this BAA upon written notice if the breaching Party has breached a material term of this BAA and the Parties agree in writing that a cure is not possible.

5.2 *Effect of Termination.* Upon termination of this BAA, for any reason, Altera shall return, at Altera's then-standard fees and expenses reasonably related to Altera's costs to return, or destroy, if feasible, all PHI received from or created or received on behalf of Client, or otherwise in Altera (or its subcontractors' or agents') possession. Altera and its subcontractors and agents shall retain no copies of the PHI. In the event that Altera determines that returning or destroying the PHI is infeasible, Altera shall extend the protections of this BAA to and limit any further Uses and Disclosures of such PHI to only those purposes that make the return or destruction infeasible.

- 5.3 *Data Return Process.* Client may receive a copy of Client’s PHI hosted by Altera per the following 2-step process. For Client PHI not hosted by Altera, Altera shall not return, but shall instead destroy such PHI.
  - 5.3.1 Client must provide Altera with written notice expressly requesting a returned copy of Client PHI hosted by Altera within the Hosting Term (as defined in the Underlying Agreement(s) or within 90 days thereafter (“Data Return Period”), provided the Underlying Agreement(s) was not terminated due to Client breach.
  - 5.3.2 Client must promptly pay Altera’s then-standard fees and expenses (as applicable), reasonably related to Allscripts’ costs for the data return service.

Altera will, in turn, within a reasonable period of time thereafter, provide Client a version of the Client PHI that is then-stored within the Solution via Altera’s then-standard means and format (which will be read compatible with a supported release of the subject Solution). At any time after the Data Return Period or upon termination by Altera for breach, Altera may remove and destroy the original and any and all copies and backup versions of Client PHI, with or without notice to Client. Upon the end of the Hosting Term, Client is in charge of implementing and hosting the Solutions and Data in the Client-selected replacement environment(s). You may engage Altera on a fee basis to assist in any such implementation as mutually agreed in a Client Order.

**6. Miscellaneous**

- 6.1 *Regulatory References.* A reference in this BAA to a section in HIPAA means the section as in effect or as amended, and for which compliance is required.
- 6.2 *Amendment.* This BAA may only be modified, or any rights under it waived, by a written agreement executed by both parties. The parties shall negotiate in good faith as is reasonably necessary to amend this BAA from time to time so that each party agrees to comply with the requirements of HIPAA and any current or future regulations promulgated thereunder that are binding on such party under such regulations.
- 6.3 *Interpretation.* Any ambiguity in this BAA shall be resolved in favor of a meaning that permits the parties to comply with HIPAA.
- 6.4 *Notice.* Any notice required under this BAA and/or requests for information to Client or Altera regarding this BAA shall be sent to:

<p><u>If to Altera:</u>          2429 Military Road, Suite 300          Niagara Falls, NY 14304          Attn: General Counsel          Email: Altera.Legal.Notices@alterahealth.com</p>	<p><u>If to Client:</u>          _____          _____          Attn: _____          Phone: _____          Email: _____</p>
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**All notices required under this BAA sent to Altera must be sent, at a minimum, via electronic mail to the email address listed above.**

- 6.5 *No Third-Party Beneficiaries.* Nothing express or implied in this BAA is intended or shall be deemed to confer upon any person other than Client and Altera, and their respective successors and assigns, any rights, obligations, remedies or liabilities.
- 6.6 *Nature of Agreement.* Nothing in this BAA 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. Altera is an independent contractor, not an agent, to Client and nothing contained in this BAA shall be intended to expand the scope or nature of the relationship.

- 6.7 *Counterparts.* This BAA may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.
- 6.8 *Governing Law.* This BAA shall be governed by and construed in accordance with applicable federal laws and regulations and the laws of the State of New York without regard to its conflict of laws principles. For the purposes of this BAA, each party hereby irrevocably, unconditionally and exclusively submits to the jurisdiction of the United States District Court for the Western District of New York or the New York state courts located in Erie County, New York and irrevocably agrees that all actions or proceedings arising out of or relating to this BAA shall be litigated exclusively in such courts. Each party hereby expressly submits to the exclusive personal jurisdiction of and venue in such courts for the limited purposes of any suit, action or other proceeding (whether at law, in equity, or otherwise) relating to this BAA, and expressly waives any claim of improper venue and any claim that any such court is an inconvenient forum.
- 6.9 *Assignment.* Altera may, in whole or in part, for any acquisition, merger, consolidation, reorganization or similar transaction, or any spin-off, sale, divestiture or other separation of all or substantially all of one or more businesses, divisions or product lines of a Party, replicate this BAA and assign its rights and obligations under such replicate agreement so as to retain the benefits of this BAA for both the assignor and the assignee entity(ies) and their respective affiliates following such transaction.
- 6.10 *Severability.* If any provision of this BAA is held by a court of competent jurisdiction to be illegal, invalid or unenforceable under present or future laws effective during the term of this BAA, the legality, validity and enforceability of the remaining provisions shall not be affected thereby.
- 6.11 *Entire Agreement.* This BAA, together with the Underlying Agreement(s), sets forth the entire agreement and understanding between the Parties relating to the subject matter hereof and supersedes all other discussions, representations, agreements, and understandings of every kind or nature, whether oral or written, with respect to such matters, including, but not limited to other business associate agreements or agreements related to patient data and the access, use, privacy, security and confidentiality of patient data. Neither Party will be bound by any representation, warranty, covenant, term or condition related to such subject matter other than as expressly set forth herein and in the Underlying Agreement(s). Notwithstanding anything else, (a) this BAA sets forth all of Altera's obligations for the Covered Conduct and no Altera obligation set forth elsewhere in the Underlying Agreement(s) apply to any Covered Conduct, and (b) in the event of any conflict between the terms of this BAA and the terms of any Underlying Agreement(s) or any other discussions, representations, agreements, and understandings between the Parties, the terms of this BAA shall control. Subject to the foregoing, this BAA is hereby made a part of and incorporated into each of the Underlying Agreement(s) and is subject to the applicable Underlying Agreement(s) provisions that are consistent herewith.

*[This space intentionally left blank.]*

IN WITNESS WHEREOF, the parties hereto have executed this BAA as of the date executed by or on behalf of an authorized representative of Client below.

ALTERA DIGITAL HEALTH INC.

By: \_\_\_\_\_  
Authorized Representative

Name: Heather Jenkins

Title: Senior Corporate Counsel

Date: \_\_\_\_\_

\_\_\_\_\_  
(Printed Client Name)  
Client #: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Representative

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone No: \_\_\_\_\_

Date: \_\_\_\_\_