

**DYNAMIC COMPUTING SERVICES CORP.,
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”) is made effective _____ (“**Effective Date**”) by and between **Dynamic Computing Services Corporation**, (“**Covered Entity**”) and _____ (“**Business Associate**”). Each of Covered Entity and Business Associate may be referenced in this Agreement as a “**Party**” and collectively as the “**Parties**.”

The Parties, intending to be legally bound, hereby agree as follows:

- I. Definitions.** Except as expressly defined in this Agreement, all capitalized terms used in this Agreement shall have the meanings set forth in HIPAA.
- a. “**Breach**” means the acquisition, access, use or disclosure of PHI in a manner not permitted by the HIPAA Privacy Rule that compromises the security or privacy of the PHI as defined, and subject to the exceptions set forth, in 45 CFR § 164.402.
 - b. “**Electronic Protected Health Information**” or “**e-PHI**” means Protected Health Information that is transmitted or maintained in Electronic Media.
 - c. “**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as amended and supplemented by the HITECH Act and its implementing regulations, as each is amended from time to time.
 - d. “**HIPAA Breach Notification Rule**” means the federal breach notification regulations, as amended from time to time, issued under HIPAA and set forth in 45 CFR Part 164 (Subpart D).
 - e. “**HIPAA Privacy Rule**” means the federal privacy regulations, as amended from time to time, issued under HIPAA and set forth in 45 CFR Parts 160 and 164 (Subparts A & E).
 - f. “**HIPAA Security Rule**” means the federal security regulations, as amended from time to time, issued under HIPAA and set forth in 45 CFR Parts 160 and 164 (Subparts A & C).
 - g. “**HITECH Act**” means Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, 42 U.S.C. §§ 17921-17954, and all its implementing regulations, when and as each is effective and compliance is required.
 - h. “**Protected Health Information**” or “**PHI**” means Protected Health Information, as defined in 45 CFR § 160.103, and is limited to the Protected Health Information received, maintained, created or transmitted on behalf of, Covered Entity by Business Associate in performance of the Services.

- i. “**Services**” means, to the extent and only to the extent they involve the creation, maintenance, use, disclosure or transmission of PHI, the services performed by Business Associate for Covered Entity pursuant to the Services Agreement.
- j. “**Services Agreement**” means the underlying agreement(s) (other than this Agreement) between the Parties pursuant to which Business Associate has access to, receives, maintains, creates or transmits PHI for or on behalf of Covered Entity in connection with, and pursuant to, the provision of the Services.

II. Permitted and Required Uses and Disclosures of PHI by Business Associate.

- a. Business Associate may use or disclose PHI solely (i) as necessary to provide the Services to Covered Entity and in compliance with each applicable requirement of 45 CFR§164.504(e), (ii) as Required by Law, or (iii) as expressly otherwise authorized under this Agreement. Business Associate shall not use or disclose PHI for any other purpose or in any other manner.
- b. Business Associate may, if necessary, use or disclose PHI for the proper management and administration of Business Associate or to fulfill its present or future legal responsibilities; provided, that (i) any disclosure is Required by Law, or (ii) Business Associate obtains reasonable advance written assurances from the person or party to whom the PHI is disclosed that (A) the PHI will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to such party, and (B) the party immediately notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- c. Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity; provided that, (i) the purpose of such aggregation is to provide Covered Entity with data analyses relating Covered Entity’s health care operations, and (ii) Business Associate may not disclose Business Associate’s PHI to another covered entity without the prior written consent of the Covered Entity.
- d. Business Associate may use PHI to create de-identified information consistent with the standards set forth at 45 CFR §164.514.
- e. Business Associate may use or disclose PHI to report violation of the law to applicable law enforcement agencies with the prior written approval of Covered Entity.

III. Obligations of Business Associate.

- a. Business Associate shall use appropriate safeguards, and comply, where applicable, with the HIPAA Security Rule with respect to e-PHI, to maintain the security and prevent the use or disclosure of the information other than as provided for by this Agreement.

- b. Business Associate shall establish and implement reasonable procedures for curing or ending, as applicable, any disclosure of PHI and any other activity or practice that constitutes a material breach or violation of the Business Associate's obligations under this Agreement and any subcontractor's violation of the restrictions and conditions applicable to Business Associate under this Agreement and mitigating, to the greatest extent possible, any effects from any improper use and/or disclosure of PHI. Business Associate will report to the designated Privacy or Security Officer of Covered Entity, in writing of the reasonable procedures taken when curing, ending or mitigating any violation under this Agreement. To the extent steps to cure or end, as applicable, any violation by a subcontractor of the restrictions and conditions applicable to Business Associate under this Agreement are unsuccessful, the Business Associate will terminate the contract or arrangement with the subcontractor to the extent termination is feasible.
- c. Business Associate shall notify the Covered Entity in writing within ten (10) days after Business Associate's Discovery of any incident that involves an unauthorized acquisition, access, use, or disclosure of PHI, even if Business Associate believes the incident will not rise to the level of a Breach. Business Associate agrees that such notification will meet the requirements of the HIPAA Breach Notification Rule set forth in 45 CFR § 164.410. Business Associate shall provide to the Covered Entity the names and contact information of all individuals whose PHI was or is believed to have been involved, all other information reasonably requested by the Covered Entity to enable the Covered Entity to perform and document a risk assessment in accordance with the HIPAA Breach Notification Rule with respect to the incident to determine whether a Breach occurred, and all other information reasonably necessary to provide notice to Individuals, the Department of Health and Human Services and/or the media in accordance with the HIPAA Breach Notification Rule. In the event of an incident that is required to be reported under this Section III.c, Covered Entity shall elect in its sole discretion whether Covered Entity, Business Associate or a third party shall be responsible for conducting an investigation of that incident and providing any required notices as set forth in this Section III.c. In accordance with this election, and notwithstanding anything to the contrary in this Agreement and without limiting in any way any other remedy available to Covered Entity at law, equity or contract, including but not limited to under Section VI.a of this Agreement, Business Associate shall (i) conduct, or pay the costs of conducting, an investigation of any incident required to be reported under this Section III.c, (ii) shall reimburse and pay Covered Entity for all expenses and costs incurred by Covered Entity that arise from an investigation of any incident required to be reported under this Section III.c and (iii) shall provide, and/or pay the costs of providing, the required notices as set forth in this Section III.c.
- d. In accordance with 45 CFR 164.502(e)(1)(ii) and 45 CFR 164.308(b)(2), Business Associate shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate, agree to the same restrictions and conditions, in writing, that apply through this Agreement to Business Associate

with respect to such PHI, including but not limited to the extent that subcontractors create, receive, maintain, or transmit e-PHI on behalf of the Business Associate, it shall require the subcontractors to comply with the HIPAA Security Rule and Business Associate's obligations under this Agreement.

- e. To the extent Business Associate is to carry out Covered Entity's obligations under the HIPAA Privacy Rule, Business Associate and any subcontractors must comply with the requirements of the HIPAA Privacy Rule that apply to Covered Entity in the performance of such obligations.
- f. Business Associate shall provide access to Covered Entity, no later than fifteen (15) days after receipt of a request from Covered Entity, to PHI in a Designated Record Set, or, if requested by Covered Entity, to an Individual, all in accordance with the requirements under 45 CFR § 164.524, including providing or sending a copy to a designated third party and providing or sending a copy in electronic format, to the extent that the PHI in Business Associate's possession constitutes a Designated Record Set.
- g. Business Associate shall make available and make any amendment(s) to PHI in a Designated Record Set within ten (10) days after receipt of a request from Covered Entity or an Individual, all in accordance with the requirements of 45 CFR § 164.526.
- h. Business Associate shall document 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 45 CFR § 164.528 and, as of the date compliance is required by final regulations, 42 U.S.C. § 17935(c).
- i. Business Associate shall make available to Covered Entity, within ten (10) days after receipt of a request, information collected in accordance with Section III.h of this Agreement to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI, or make that information available directly to an Individual, all in accordance with 45 CFR § 164.528 and, as of the date compliance is required by final regulations, 42 U.S.C. § 17935(c).
- j. Business Associate shall notify Covered Entity in writing within three (3) days after Business Associate's receipt directly from an Individual of any request for access to or amendment of PHI, or an accounting of disclosures, as contemplated in Sections III.f, III.g, III.h and III.i of this Agreement.
- k. Business Associate agrees to make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to (a) the Covered Entity and/or to the Secretary, for purposes of the Secretary determining Covered Entity's compliance with HIPAA,

and (b) to allow the Covered Entity to determine Business Associate's compliance with the terms of this Agreement.

- l. Business Associate shall request, use and/or disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure; provided, that Business Associate shall comply with 45 CFR §§ 164.502(b) and 164.514(d).
- m. Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI as prohibited by 45 CFR § 164.502(a)(5)(ii).
- n. Business Associate shall not make or cause to be made any communication about a product or service that is prohibited by 45 CFR §§ 164.501 and 164.508(a)(3).
- o. Business Associate shall not make or cause to be made any written fundraising communication that is prohibited 45 CFR § 164.514(f).
- p. Business Associate shall take all necessary steps, at the request of Covered Entity, to comply with requests by Individuals not to send PHI to a Health Plan in accordance with 45 CFR § 164.522(a).
- q. Business Associate shall take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement or violate provisions of HIPAA that apply to Business Associate.
- r. To the extent that Business Associate conducts electronic Transactions on behalf of Covered Entity, Business Associate and any subcontractor or agent it involves with the conduct of such Transactions will comply with each applicable requirement of the Electronic Transactions Rule (45 CFR 162 Subparts I through S).
- s. Business Associate shall comply with the National Provider Identifier requirements, if appropriate.

IV. Obligations of Covered Entity.

Covered Entity agrees that it will:

- a. Not request Business Associate use or disclose PHI in any manner that would not be permissible under HIPAA if done by the Covered Entity.
- b. Notify Business Associate of any changes in the form of notice of privacy practices (the "Notice") that Covered Entity provides to Individuals pursuant to HIPAA, and provide Business Associate a copy of the Notice currently in use.
- c. Notify Business Associate of any restrictions on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to

the extent that such restriction may affect the Business Associate's use or disclosure of PHI

V. Term and Termination.

- a. The term of this Agreement shall commence as of the Effective Date and shall terminate concurrently with the Services Agreement unless earlier terminated, by mutual written agreement of the Parties, or in accordance with this Section IV.
- b. Notwithstanding anything in this Agreement to the contrary, Covered Entity may immediately terminate this Agreement and the Service Agreement(s) if it determines that Business Associate has breached a material term of this Agreement, provided that Covered Entity has (i) provided Business Associate with written notice of the Breach and ten (10) days to cure the Breach, and (ii) Business Associate has failed to cure the Breach within such thirty (30) day period. If Covered Entity determines in its sole judgment that it is not possible to cure the Breach or, Covered Entity may immediately terminate this Agreement and the Services Agreement. If neither termination nor cure is feasible, Covered Entity will report the violation to the Secretary.
- c. Business Associate may immediately terminate this Agreement if Covered Entity has breached a material term, and has not cured such breach within thirty (30) days of receipt of written notice of the breach. Business Associate agrees, however, to cooperate with Covered Entity to find a mutually satisfactory resolution to the matter prior to terminating and further agrees that, notwithstanding this provision, it shall not terminate this Agreement so long as the Service Agreement is in effect.
- d. Within twenty (20) days after termination or expiration of this Agreement, Business Associate will return or destroy, if feasible, all PHI received from or created or received by Business Associate, including all PHI in possession of Business Associate's agents or subcontractors, on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information. If returning or destroying the PHI is infeasible, Business Associate agrees to provide to Covered Entity a written statement that it is infeasible and a reasonably detailed description of the basis for such determination. If Covered Entity agrees that it is infeasible, then Business Associate agrees that it will extend the protections of this 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 the PHI. Under any circumstances, Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to Business Associate's use and/or disclosure of any PHI retained after the expiration or termination of this Agreement, and shall limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible.

VI. Miscellaneous.

- a. Each Party (“**Indemnifying Party**”) agrees to indemnify, defend and hold harmless the other Party and its respective officers, directors, employees, subsidiaries, contractors, subcontractors, agents and other members of such party’s workforce (each an “**Indemnified Party**”), from and against all third party claims (whether in law or equity), obligations, actions, causes of action, suits expenses, liabilities, damages, claims, costs, fines, penalties and losses (including attorneys’ and consultant fees) (collectively, “**Losses**”) reasonably incurred in connection with, related to or arising from (i) the negligent or fraudulent act or omission of the Indemnifying Party, its agents, representatives or subcontractors; (ii) a violation of HIPAA by the Indemnifying Party, its agents, representatives or subcontractors, and (iii) a breach of this Agreement by the Indemnifying Party, its agents, representatives or subcontractors. Upon demand by the Indemnified Party, Indemnifying Party shall defend any investigation, claim, litigation or other proceeding brought or threatened against the Indemnified Party, at the Indemnifying Party’s expense, by counsel reasonably acceptable to the Indemnified Party. The Indemnifying Party shall not enter into any settlement without the written consent of Indemnified Party, such consent not to be unreasonably withheld. A Party’s obligation to indemnify an Indemnified Party shall survive the expiration or termination of this Agreement for any reason.
- b. The Parties to this Agreement do not intend to create any rights in any third parties. The obligations of Business Associate under Sections III, V.d and V.d of this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Services Agreement, and/or the business relationship of the Parties, and shall continue to bind Business Associate, its agents, employees, subcontractors, successors, and assigns as set forth herein.
- c. This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement shall be governed by the laws of the State of Washington. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion. The Parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides Services to Covered Entity contains provisions relating to the use or disclosure of PHI which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate’s use and disclosure of PHI. This Agreement, together with

the Services Agreement, constitutes the entire agreement of the Parties relating to Business Associate's use or disclosure of PHI.

- d. The terms of this Agreement to the extent they are unclear, shall be construed to allow for compliance by the Covered Entity with HIPAA and the HITECH Act. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event Covered Entity believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of HIPAA, Covered Entity shall notify Business Associate in writing. For a period of up to thirty (30) days, the Parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the requirements of HIPAA, then the Covered Entity has the right to terminate upon written notice to the Business Associate.
- e. The rights and remedies of the Parties under this Agreement are cumulative, and either Party may enforce any of its rights or remedies under this Agreement or other rights and remedies available to it at law or in equity. Any violation of the this Agreement by Business Associate shall make it liable for the same civil and criminal penalties as a covered entity, including all increased monetary penalties outlined in the HITECH Act.
- f. Business Associate understands and agrees that it will not assign, delegate, or subcontract any of its rights or obligations under this Agreement to individuals or entities residing outside the United States.
- g. This Agreement may be executed in counterparts, each of which will constitute an original and all of which will be one and same document.
- h. Notices under this Agreement are sufficient if given by nationally recognized overnight courier service, certified mail (return receipt requested), facsimile with electronic confirmation (or electronic file) or personal delivery to the other party at the address below the party's signature line below. Notice is effective: (i) when delivered personally, (ii) three business days after sending by certified mail, (iii) on the business day after sending by a nationally recognized courier service, or (ii) on the business day after sending by facsimile or electronic file to the sender. A Party may change its notice address by giving notice in accordance with this section.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Covered Entity:

Dynamic Computing Services Corporation
115 Wild Basin Road S. Suite 107
Austin, TX 78746

By: _____
Its: _____
Date: _____

Notice Address:
Dynamic Computing Services Corp.
23849 225th Way SE
Suite 100
Maple Valley, WA 98038
Attention: Holly Hill

Business Associate:

By: _____
Its: _____
Date: _____

Notice Address:

Attention: _____