

## **Terms of Service**

These Terms of Service ("TOS") entered into by and between Falcon, LLC ("Company") and the "Physician" (i) identified in the executed Service Order; or (ii) the authorized representative of the Physician who, by clicking "I agree", acknowledged, understood, and agreed to be bound by this TOS.

### 1. Access to Falcon Service; Ownership; Data.

a. License. The "Falcon Service" means such Falcon service level and ancillary services set forth on a Service Order. Subject to Physician's compliance with this TOS, Company hereby grants Physician and each of Physician's licensed billing providers ("LBP") and/or administrative users ("Administrative User") identified by Physician to Company for provision of access to the Falcon Service (collectively, the "Authorized End Users") the limited, non-exclusive, nontransferable, revocable right to access and use the Falcon Service during the Term (as defined in Section 5), solely for managing data pertaining to Physician's patients and clinical practice. Physician will only use the Falcon Service in the approved manner, according to all instructions, and in compliance with all laws. Physician will be responsible for all individuals, such as LBPs and Administrative Users, using the Falcon Service on Physician's behalf, and will ensure only Authorized End Users are permitted to use the Falcon Service.

b. Third Party Services. Company may, in its discretion, from time to time, integrate certain third party products or services into the Falcon Service ("Third Party Services"). Physician acknowledges and agrees that the Third Party Services are subject to all the same obligations and protections hereunder as the Falcon Service, and that the providers of such services ("Third Party Providers") are express third party beneficiaries of this TOS. Physician further agrees to comply with any applicable terms of use in effect for any Third Party Services. Company makes no representation or warranties with respect to any Third Party Services.

c. User IDs. Physician will provide Company with the name and contact information for each of its Authorized End Users and Company will provide each Authorized End User a unique user identification name and password to access and use the Falcon Service ("User ID(s)"). Physician will (i) limit access and use of the Falcon Service to only Authorized End Users, (ii) ensure the security and confidentiality of its User IDs and will be responsible for the use of, and all activities performed under, its User IDs, and (iii) notify Falcon as soon as practicable, but in any event no later than three (3) business days after termination of its relationship with any of its Authorized End Users so that any access by such former Authorized End User can be timely deactivated.

d. Documentation. Company will make available to Physician sufficient information, as updated from time to time by Falcon in its discretion, to enable Physician and its Authorized End Users to use the Falcon Service (the "User Documentation").

e. Updates. Company has the right, from time to time, to make modifications to the Falcon Service. Company will deliver to Physician reasonable advance notice of any material modifications.

f. Ownership of Service. The Falcon Service and all intellectual property rights in and to the Falcon Service are, as between Company and Physician, the sole and exclusive property of Company, including any modifications or improvements thereto, and all recommendations or ideas for modifications, customizations, improvements or enhancements to the Falcon Service submitted by Physician to Company or its personnel. Company reserves all rights not expressly granted pursuant to this TOS. Physician will not: (i) attempt to modify, reverse compile, disassemble or otherwise reverse engineer the source or object code of the Falcon Service; (ii) copy, distribute, license, sell or otherwise make available including through any dial-up, remote access, interactive or other on-line service, directly or indirectly, the Falcon Service to any third party; (iii) use the Falcon Service to provide data processing services to any third party on a service bureau, outsourcing, time-sharing or facilities management basis or otherwise; or (iv) access or use the Falcon Service other than as expressly provided in this TOS.

2. Electronic Interfaces with Third Party Systems. Physician may from time to time request that Company connect to a third party's software and/or system ("Interface"). Subject to the terms of this TOS, if Company agrees, at its sole discretion, to license such Interface to Physician as evidenced in an applicable Service Order, Company grants, and Physician accepts, a limited, non-exclusive, non-assessable, user license for a certain number of LBPs, as outlined in the applicable Service Order, to use the Interface. All right, title, and interest in the Interface and any updates, upgrades or modifications thereof, are the exclusive property of Company. Physician will not lease, loan, resell for profit, distribute or otherwise grant any rights in the Interface in any form to any other party. Physician shall obtain from individual patients any and all consents, authorizations or other permissions that may be necessary or required by any applicable federal or state laws, including HIPAA, in order for Company and the third party software and/or system company to receive, access, transmit, maintain, analyze or otherwise use and/or disclose the data as contemplated under this TOS and applicable Service Order, and/or for Company to fulfill its obligations under this TOS and applicable Service Order (collectively, "Authorizations"). Physician represents and warrants to Company and the third party software and/or system company that (a) it has included in its Notice of Privacy Practices that it may disclose protected health information for treatment, payment and healthcare operations purposes, and (b) it has obtained, and will obtain

any and all Authorizations required under this Section. Physician shall indemnify, defend and hold harmless Company and the third party software and/or system company and their respective shareholders or members, directors, officers, employees or agents from and against any and all claims, causes of action, liabilities, losses, damages, penalties, assessments, judgments, awards or costs, including reasonable attorneys' fees and costs, arising out of, resulting from or relating to any breach by Physician of its representations and warranties or obligations under this Section.

### 3. Certified Electronic Health Records & Reimbursement Incentives.

a. Company represents and warrants that the Falcon Service shall meet the technological requirements for certification as an electronic health record necessary to qualify for the reimbursement incentives authorized by The Health Information Technology for Economic and Clinical Health Act ("The HITECH Act"), enacted as part of the American Recovery and Reinvestment Act of 2009 ("ARRA").

b. Notwithstanding the foregoing, Physician acknowledges and agrees that laws, regulations and guidelines promulgated by federal and state government (including without limitation, the HITECH Act) impose additional requirements with which Physician must comply in order to be eligible for reimbursement, incentive payments (including without limitation, payments for achievement of meaningful use of EHR), or other payments (collectively, "Payments"), and that Payments are contingent upon the discretion of government authorities and contractors not affiliated with or controlled by Company. Physician acknowledges and agrees that Company makes no guarantee or representation that Physician will be awarded Payments. Any and all actions taken by Physician in pursuit of Payments, including submissions of attestations, data, statements and materials to the federal government, are Physician's sole responsibility, and are undertaken at Physician's sole risk.

c. Company may, at its discretion, provide Physician with educational materials and support services, both verbal and written, intended to assist Physician with seeking and obtaining Payments ("Informational Materials"). INFORMATIONAL MATERIALS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND ARE NOT A SUBSTITUTE FOR COMPREHENSIVE LEGAL OR COMPLIANCE ADVICE OR ANALYSES.

d. Company represents and warrants that it does not knowingly restrict the interoperability of the Falcon Service.

4. Physician Obligations. Physician represents, warrants and covenants, that Physician: (i) will use the Falcon Service solely in accordance with this TOS, the current User Documentation, Company's then current Acceptable Use Policy, any and all terms of use indicated on Falcon websites, and if applicable, the Service Order; (ii) will provide and maintain all computer and network equipment necessary to access and use the Falcon Service; (iii) will be solely responsible for inputting and retrieving data from the Falcon Service, for the accuracy and adequacy of information and data furnished for processing, and for the accuracy and adequacy of any attestation, statement, or data furnished to a government entity or other payer entity as part of a request for payment, or in response to an audit or any other information request or order; (iv) will be solely responsible for and take full responsibility for (1) any decision with regard to the appropriateness of patient treatment, (2) the use of information provided by the Falcon Service in patient care, (3) the care and well-being of Physician's patients, and (4) the validity or reliability of information retrieved from the Falcon Service; (v) will comply with all applicable laws; (vi) will promptly provide Company with all necessary access to records, and will make available to Company all necessary Physician personnel to enable Company to perform the Services in a timely manner; (vii) does not possess and has not obtained software, items or services equivalent to those provided under this TOS and/or Service Order; and (viii) has not received any loans from Company to finance Physician's payment obligations, if any, under a Service Order.

5. CPT Codes. The CPT Codes made available to Physician as part of the Falcon Service are licensed by Falcon from the American Medical Association ("AMA"). Physician is granted a limited, non-transferable, non-exclusive sublicense for the sole purpose of Physician's internal use. Physician is prohibited from publishing, distributing via the Internet or other public computer based information system, creating derivative works (including translating), transferring, selling, leasing, licensing or otherwise making available to any unauthorized party the CPT Codes, or a copy or portion of the CPT Codes. "CPT" is a registered trademark of the AMA. Physician's use of the CPT Codes as part of the Falcon Service is contingent upon continued contractual relationship with Falcon. Fee schedules, relative value units, conversion factors and/or related components are not assigned by the AMA, are not part of CPT, and the AMA is not recommending their use. The AMA does not directly or indirectly practice medicine or dispense medical services. The AMA assumes no liability for data contained or not contained herein. Physician shall ensure that any Authorized Users shall comply with these requirements regarding the CPT Codes. The CPT Codes are provided "as is" without any liability to the AMA, including without limitation, no liability for consequential or special damages, or lost profits for sequence, accuracy, or completeness of data, or that it will meet Physician's requirements. Physician acknowledges the AMA disclaims any liability for any consequences due to use, misuse, or interpretation of information contained or not contained in the CPT Codes.

6. Physician Data. As between the Parties, Physician will have ownership of Physician individual patient medical records and laboratory and clinical data (the "Data") entered into and maintained in the Falcon Service on behalf of Physician. Notwithstanding the foregoing, Physician hereby grants Company and Company's Affiliates a perpetual license to: (i) use the Data for analysis and research; and (ii) disclose and sublicense use of the Data and Data analysis ("Data Derivatives") to third parties including non-affiliated third parties, provided that any such Data and Data Derivatives will be in de-identified form as set forth and prescribed in (a) the safe harbor de-identification of patient information contained in Section 164.514(b)(2) of the Privacy Rule implementing HIPAA (the "HIPAA Safe Harbor"), or (b) the standards for "statistical de-identification" as set forth in Section 164.514(b)(1) of the Privacy Rule implementing HIPAA (the "Statistical De-Identification Requirements") prior to such use, analysis, disclosure or sublicense. Physician further grants Company and Company's Affiliates a perpetual, royalty-free, exclusive license in any and all Data Derivatives created in compliance with the TOS. Notwithstanding the foregoing, Physician shall not hereby be prevented from creating, using, disclosing, licensing or transferring its own de-identified information using Physician's Data. Company will develop, implement, maintain and monitor commercially reasonable physical, technical and administrative safeguards to protect the Data in its possession or under its control against accidental loss or unauthorized access, use, disclosure, alteration, or destruction.

7. Term and Termination. For all Falcon Services set forth on the applicable Service Order (i) the term of this TOS will be effective on the effective date as set forth in the Service Order; (ii) either party may terminate the Service Order and TOS in the event the other party commits a material breach and fails to cure such breach within thirty (30) days of receiving notice; and (iii) can be terminated for convenience by Company. If a Service Order is terminated during the initial twelve (12) month period for any reason, the Parties will be prohibited from entering into another agreement for the Falcon Service prior to the passing of the first anniversary of the effective date of such Service Order. The following provisions survive expiration or termination of this TOS: 1(f), 3, 5, 6, 7, 9, and 10. Upon any termination of this TOS, Physician will discontinue all use of the Falcon Service and immediately return all Company Confidential Information in its possession to Company or, at Company's option, destroy all such Confidential Information, including all copies or partial copies thereof and certify thereto.

8. Confidential Information. Each Party will hold in strict confidence all Confidential Information of the other Party to which such Party gains access under this TOS, and will not use, reproduce, publish, disclose or otherwise make known to any person or entity any such Confidential Information, except to the extent (i) required in the performance of such Party's obligations under this TOS, (ii) as otherwise required by law and/or by a court of competent jurisdiction, or (iii) disclosure is made, in accordance with applicable law, to a Company agent who the Company reasonably and in good faith believes is needed to be involved in the evaluation and performance of the Falcon Services, provided such agent is informed of the confidentiality requirements contained herein and agrees to be bound to substantially similar confidentiality requirements. Company acknowledges and agrees that from time to time during the term of this TOS, Company may be exposed to or have access to Protected Health Information ("PHI") as defined by the Health Insurance Portability and Accountability Act of 1996 45 CFR Parts 160 and 164 ("HIPAA") related to patients of Physician. Company acknowledges that any such PHI is Confidential Information of Physician. In respect of such PHI that Company has exposure or access to as a result of all Falcon Services set forth on a Service Order, Company and Physician will comply with the terms of a separately executed Business Associate Agreement in a form as attached hereto as Exhibit A. Neither Party will make any public announcement of the matters described in this TOS without the express prior written consent of the other Party. Except as otherwise set forth herein, neither Party will use, release, publish or distribute any materials or information containing the names, trade names, or trademarks of the other Party without the express prior written consent of such other Party.

9. Audit. Company has the right, upon three (3) business day's prior notice, to inspect any of Physician's premises and to access the Falcon Service during normal business hours, to verify that it is being used and protected as specified herein. Within ten (10) business days of reasonable request by Company, which request will occur no more frequently than every six (6) months during the Term hereof, Physician will provide a current list of Authorized End Users to Company.

#### 10. Indemnification.

a. By Company. Company will indemnify, defend and hold Physician and its directors, officers, employees and agents ("Physician Indemnitees") harmless from any claims, actions and damages (including the cost of investigating, defending or settling any action, claim or demand including, but not limited to, attorneys' fees and litigation costs) from every kind and nature, which may be made, threatened to be made, or instituted against the Physician Indemnitees arising out of or in any way connected with: (i) a breach of the TOS by Company; (ii) the negligence or willful misconduct of Company (iii) the Falcon Service, as provided by Company to Physician under this TOS and used within the scope of this TOS, infringing upon any U.S. patent or copyright issued as of the effective date of this TOS, or incorporating any misappropriated trade secrets. Company has no indemnification obligation for any claim of infringement or misappropriation to the extent that it results in whole or part from:

(a) modification to the Falcon Service made by a party other than Company; (b) failure of Physician to use updates or modification to the Falcon Service; (c) combination of the Falcon Service with other systems, products, processes or materials; (d) improper use of the Falcon Service in violation of any terms of this TOS; or (e) compliance by Company with designs, plans or specifications furnished by or on behalf of Physician.

b. By Physician. Physician will indemnify, defend and hold Company and its directors, officers, employees and agents (“Company Indemnitees”) harmless from any claims, actions and damages (including the cost of investigating, defending or settling any action, claim or demand including, but not limited to, attorneys’ fees and litigation costs) from every kind and nature, which may be made, threatened to be made, or instituted against the Company Indemnitees arising out of or in any way connected with: (i) a breach of the TOS by Physician; (ii) any medical malpractice claim, tort claim, statutory claim or other claim against the Company Indemnitees arising out of the TOS; or (iii) the negligence or willful misconduct of Physician.

c. Process for Indemnification. Each Party’s indemnification obligations under this Section are conditioned upon the Party requesting indemnification: (a) promptly notifying the other Party in writing of the claim; (b) granting the Party providing indemnification sole control of the defense and settlement of the claim, provided that the Party providing indemnification will not settle a pending matter without first notifying the Party requesting indemnification; and (c) providing the Party providing indemnification with all assistance, information and authority required for the defense and settlement of the claim.

d. Injunctions. If Physician’s use of the Falcon Service is at risk of being enjoined due to the type of infringement specified above, Company has the right, at its sole option and expense to: (a) procure for Physician the right to continue using such Falcon Service under the terms of this TOS; (b) replace or modify such Falcon Service so that it is non-infringing; or (c) terminate Physician’s rights and Company’s obligations hereunder with respect to such Falcon Service with no further liability.

#### 11. Warranties, Limitation of Liability; Allocation of Risk.

a. WARRANTY DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS TOS, THE SERVICES ARE PROVIDED TO PHYSICIAN “AS IS” WITH ALL FAULTS AND DEFECTS AND WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COMPANY HEREBY DISCLAIMS ALL WARRANTIES PERTAINING TO THE SERVICES OR THE USE THEREOF, INCLUDING THE FALCON SERVICE (AND ANY MATERIALS PROVIDED TO PHYSICIAN UNDER THIS TOS AND/OR SERVICE ORDER), EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, DESIGN, NON-INFRINGEMENT, OPERATION OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY ARISING FROM CONDUCT, COURSE OF DEALING, CUSTOM OR USAGE IN TRADE. COMPANY DOES NOT WARRANT THAT THE SERVICES WILL SATISFY PHYSICIAN’S REQUIREMENTS OR THAT THE OPERATION OF THE FALCON SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. THE ENTIRE RISK ARISING OUT OF THE USE, PERFORMANCE, OR INABILITY TO USE THE SERVICES REMAINS WITH PHYSICIAN.

b. LIMITATION OF LIABILITY. COMPANY WILL HAVE NO LIABILITY FOR INDIRECT, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), INCLUDING BUT NOT LIMITED TO, LOSS OF REVENUE OR PROFITS, LOST BUSINESS OR LOSS OF DATA OR OTHERWISE RELATING TO THE FALCON SERVICES OR THE USE OR INABILITY TO USE ANY OF THE SERVICES. COMPANY’S TOTAL LIABILITY TO PHYSICIAN AND ANY OTHER PERSON OR ENTITY, INCLUDING WITHOUT LIMITATION PHYSICIAN’S PATIENTS, FOR BREACH OF CONTRACT AND ALL OTHER CLAIMS (INCLUDING TORT CLAIMS) ARISING IN CONNECTION WITH THIS TOS OR THE FALCON SERVICE, WILL NOT EXCEED THE FEES PAID BY PHYSICIAN TO COMPANY HEREUNDER DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM.

c. ALLOCATION OF RISK. IN THE EVENT THAT THE FALCON SERVICE OR ANY REPORT OR INFORMATION GENERATED BY THE FALCON SERVICE IS USED IN CONNECTION WITH ANY DIAGNOSIS OR TREATMENT BY PHYSICIAN OR ANY OF PHYSICIAN’S EMPLOYEES, AGENTS, REPRESENTATIVES, AND THE LIKE, PHYSICIAN WILL TAKE ALL RESPONSIBILITY IN CONNECTION THEREWITH, INCLUDING RESPONSIBILITY FOR INJURY, DAMAGE AND/OR LOSS RELATED TO SUCH DIAGNOSIS OR TREATMENT. The considerations and limitations of liability set forth in this TOS reflect the allocation of risk negotiated and agreed to by the Parties. The Parties would not enter into this TOS without these limitations on its liability. These limitations will apply notwithstanding any failure of essential purpose of any limited remedy.

#### 12. Support.

Support may be contacted via telephone, email or fax. Company will provide Physician with telephone access to a help desk during standard Business Hours of 8:00 a.m. to 8:00 p.m. Eastern Time, Monday to Friday. On call support will be available twenty four hours a day, seven days a week (24/7) for emergencies; all non-emergency and routine calls will be returned the next business day. Email and fax requests will be read and responded to within sixty (60) minutes during Business Hours and next

business day for outside Business Hours. Help Desk access is limited to the authorized Physician liaison, or an alternate, if the primary liaison is unavailable. The Help Desk is not to be used by unauthorized Physician staff. Contact information for Support is as follows:

Telephone: 1-888-782-1EHR (1347)

Email: [EHRSupport@davita.com](mailto:EHRSupport@davita.com)

eFax: 1-866-917-5723

### 13. General.

a. No Requirement to Refer. Nothing in the TOS and/or the Service Order will be construed to require or encourage Company or Physician to refer, or to encourage others to refer, patients or other business opportunities to each other or to Company's affiliates. Company does not restrict, and will not take any action to limit, Physician's right or ability to use the Services for any patient without regard to payor status. Physician acknowledges that the receipt, amount or nature of any donated items or services is not a condition of doing business with Company.

b. Notice. Any notice required to be given under this TOS will be in writing, in English, and transmitted via overnight courier, hand delivery or certified or registered mail, postage prepaid and return receipt requested, to a Party at the address set forth on the first page of this TOS and/or Service Order or such other addresses as may be specified or updated by written notice. In order to be valid, concurrently with any notice being sent to Company, a copy of such notice will also be sent to: 2000 16th Street, Denver, Colorado 80202 Attention: Chief Legal Officer. Notices sent in accordance with this Section will be deemed effective when received.

c. Entire Agreement. This TOS and if applicable, the Service Order, contain the full and complete understanding of the Parties with respect to the subject matter hereof and supersedes all prior oral and written instruments, communications and understandings by and between the Parties concerning such subject matter, and may only be amended in a writing signed by the Parties.

d. Injunctive Relief. The Parties acknowledge that any disclosure of a Party's Confidential Information will result in irreparable injury to the Party, which injury could not be adequately compensated by the payment of money damages. The Parties will be entitled to seek and obtain injunctive relief against any breach or threatened breach of its confidentiality obligations hereunder, in addition to any other legal remedies which may be available. In the event of any actual or threatened breach of Company's intellectual property rights or Physician's confidentiality obligations, Company is entitled to obtain injunctive and all other appropriate relief from a court of competent jurisdiction, without being required to: (a) show any actual damage or irreparable harm, (b) prove the inadequacy of its legal remedies, or (c) post any bond or other security. Each Party acknowledges and agrees that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope and content.

e. Waiver/Amendment. No waiver, amendment, or modification of any provision of this TOS will be effective unless in writing and signed by the Party against whom such waiver, amendment, or modification is sought to be enforced. No failure or delay by either Party in exercising any right, power or remedy under this TOS, except as specifically provided herein, will be deemed as a waiver of any such right, power, or remedy.

f. Force Majeure. Each Party will be excused from performance under this TOS while and to the extent that it is unable to perform due to a cause beyond its reasonable control. If either Party is rendered unable wholly or in part by force majeure to carry out its obligations under this TOS, then the Party affected by force majeure will give written notice with explanation to the other Party immediately. The affected obligations of the Party giving notice will be suspended only during the continuance of the events giving rise to the force majeure provided that the affected Party is acting with due diligence to remedy the delay caused by the force majeure. If either Party is unable to perform due to force majeure for a period of more than twenty (20) days due to any delay, the other Party has the right to terminate this TOS.

g. Assignment. Physician will not have the right to assign any of its rights or delegate any of its obligations under this TOS to any third party without the express written consent of Company, and any purported attempt to do so will be void. Subject to the foregoing, this TOS will be binding upon and inure to the benefit of the permitted successors and assigns of the Parties hereto.

h. Jurisdiction and Venue; Choice of Law. This TOS is governed by the laws of the State of Colorado without regard to its conflicts of law provisions. THE PARTIES WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY LITIGATION ARISING FROM OR RELATED TO THIS TOS. Any litigation or enforcement of an arbitration award will be brought in District Court, Denver County, State of Colorado or the U.S. District Court for the District of Colorado, as appropriate. Each Party consents to personal and subject matter jurisdiction and venue in such courts and waives the right to change venue. The Parties acknowledge that all directions issued by the forum court, including injunctions and other decrees, will be binding and enforceable in all jurisdictions and countries.

i. Severability. In the event any provision of this TOS is determined to be invalid, such invalidity will not affect the validity of the remaining portions of this TOS, and the Parties will promptly substitute for the invalid provision a valid and enforceable provision which most closely approximates the intent and economic effect of the invalid provision.

j. Interpretation. Any uncertainty or ambiguity with respect to any provision of this TOS will not be construed for or against any Party based on attribution of drafting to either Party. Article, section, and subsection titles and captions herein are inserted as a matter of convenience and for reference and do not, in any way, define, limit, extend, or describe the scope or construction of this TOS or the intent of any of its provisions.

k. No Partnership or Agency. Nothing contained in this TOS will be construed as creating a relationship between the Parties of partners, joint venturers, or agents, and neither Party has the power to bind the other to any contract or commitment.

l. Advice of Counsel. The Parties represent that they have read and understand the terms of this TOS and/or Service Order and are entering into this TOS and/or Service Order freely, having had a full and fair opportunity to obtain the advice of counsel in relation hereto.

#### 14. Electronic Signature Agreement.

a. Electronic Signature. If an individual physician operating under the terms of this TOS ("Practitioner") is granted access to any DaVita HealthCare Partners Inc. ("DaVita") software, systems and/or related products ("Systems") with the ability sign physician orders online and/or electronically, Practitioner shall: (a) only electronically sign Practitioner's own orders, (b) not have another physician or individual sign any of Practitioner's orders, even if they are caring for a Practitioner's patient in the Practitioner's absence (if a physician enters an order for Practitioner's patient while caring for Practitioner's patient, that physician shall be responsible for signing that order), (c) in electronically signing Practitioner's orders, verify the accuracy, appropriateness and the medical necessity of the order, (d) be held as legally bound, obligated, and responsible for any use of Practitioner's electronic signature as Practitioner would be by signing the same medical documentation in hard copy, (e) only access health information on DaVita Systems in order to provide care for patients with whom Practitioner has a physician-patient relationship or for whom Practitioner has been asked to provide care by another physician, (f) maintain the confidentiality of the health information Practitioner accesses through DaVita Systems and will comply with all applicable federal and state laws and professional standards, (g) be the only person permitted to use Practitioner's password and that Practitioner will be solely responsible for the use and confidentiality of Practitioner's password. Practitioner understands that it is a material breach of this TOS to share a password with another person. If Practitioner has a reason to believe that Practitioner's password is no longer secure or that someone else has gained access to Practitioner's password or has signed any of Practitioner's orders, Practitioner agrees to immediately notify the DaVita Hotline at 1-888-782-1347 and then change Practitioner's password. Practitioner understands that the Systems are the property of DaVita and that Practitioner is only allowed use of Systems in order to provide care to Practitioner's patients. Practitioner agrees not to reproduce, redistribute, retransmit, publish or otherwise transfer, any proprietary aspect of Systems without DaVita's prior written consent.

b. Scope of Licensure. Practitioner understands that the scope of orders and other medical documentation Practitioner is able to electronically sign may be limited by applicable laws and regulations that govern the scope of practice based on Practitioner's licensure and/or certification. Practitioner understands and agrees that it is Practitioner's sole responsibility to use the System in accordance with all applicable laws and regulations and not to exceed the scope of practice authorized by such laws and regulations. Practitioner acknowledges that DaVita and Company in no way warrants or claims that the System has the controls in place to prevent Practitioner from signing orders or ordering prescriptions beyond this authorized scope of practice. DaVita and Company hereby disclaim any and all liability resulting from Practitioner's use of the System contrary to all laws and regulations governing Practitioner's scope of practice. Practitioner shall hereby indemnify and hold harmless DaVita and Company, their respective officers, agents, employees, successors, and assigns, from any claim, demands, damages, or costs (including reasonable attorneys' fees), including but not limited to from any court or administrative tribunal in a disciplinary action, in any way related to or connected with the use of Practitioner's electronic signature beyond Practitioner's authorized scope of practice.

c. Termination. Without limiting other remedies available to DaVita and/or Company, Practitioner understands that DaVita and/or Company may restrict, suspend, or terminate Practitioner's ability to sign Practitioner's orders electronically without notice and with or without cause at DaVita's and/or Company's sole discretion.

#### 15. Additional Terms- For all Falcon Services set forth on a Service Order the following additional terms shall apply:

a. Fees.

i.) Costs & Donation. Physician will pay Company all fees set forth in the Service Order. The Parties agree that the fees contemplated therein have been determined with arm's-length bargaining, and are consistent with fair market value in arm's-length transactions. Subject to the required contribution from Physician, and as permitted by applicable laws, Company will donate the amounts specified in the Service Order. A summary explanation of Company's costs, amounts charged Physician and the difference between the two amounts, which represents Company's donation, are as set forth in the Service Order. The Falcon Services and fees may be amended from time to time to include additional licenses and services agreed to by the Parties subject to the terms and conditions hereof, by adding new Service Orders, the fees for which will be charged to Physician at the then current rates.

ii.) Early Termination Fee. If Physician terminates a Service Order (except due to material breach by Company), or if Physician terminates any LBP, Physician may, at Company's sole and absolute discretion, pay an early termination fee in an amount equal to one third of the remaining balance of fees for the then-current term or the terminated LBP, as applicable. The early termination fee for an LBP will be waived by Company in the event of (i) death of an LBP; or (ii) retirement of an LBP from the practice of nephrology, provided that Physician has provided ninety (90) days prior written notice of the LBP's retirement. Physician will have the right to replace a LBP authorized hereunder with another LBP without incurring an early termination fee. Physician agrees to provide Company with written notice of any termination or replacement of LBPs within ten (10) business days of such termination or replacement.

iii.) Billing & Payment. Payments of all implementation fees, setup fees, and service fees for the first month of service shall be due within 30 days of the Effective Date, as defined in the Service Order. All other fees, including but not limited to all subsequent monthly service fees, shall be initiated on the day of Physician's first use and acceptance of the Falcon Service in a live, production environment using actual Physician data ("Go Live Date"). Invoices for such fees shall be billed in advance and shall be due within thirty (30) days of the invoice date. All payments shall be made in US dollars. In the event that any withdrawal or payment is returned due to non-sufficient funds ("NSF"), Physician will be charged a NSF fee of twenty-five dollars (\$25.00) for each such return. Any payment that is not paid when due hereunder will be subject to a late payment charge at the rate of one percent (1%) for each month or part of a month (or, if lower, the highest rate permitted by applicable law) for any period during which the amount due will remain unpaid. In addition to the fees set forth herein and in the Service Order, Physician will pay amounts equal to any domestic (United States) and foreign sales, use, excise, privilege, value added tax or any other taxes or assessments, however designated or levied, assessed on payments made under this TOS and/or Service Order. All service fees will be subject to annual increases based on increases in the Consumer Price Index ("CPI"), which increase will be effective each year on the anniversary of the Go Live Date.

iv.) Interfaces for Practice Management Systems. Physician shall be responsible for all Interface middleware fees associated with the Physician's practice management system that require a third party middleware vendor (such as XLINK). Such fees shall include, without limitation, fees related to upgrades, additional provider licenses, and re-registrations. Physician hereby agrees to pay such third party middleware vendor directly for such fees. Failure to pay such fees may adversely impact the functionality associated with Physician's Interface with the practice management system.

b. Implementation. If applicable, the parties will work together to develop a detailed implementation plan. Physician acknowledges that no implementation or training will be provided hereunder until receipt of the implementation fees and the first month of service fees due under the Service Order.

c. Service Level Agreement.

i.) Company will use commercially reasonable efforts to ensure industry standard availability of the Falcon Services. The calculation for availability will be performed using Company-generated reporting functions. The calculation of availability will expressly exclude planned downtime for service, and anything outside of Company's control, such as, without limitation, (a) any act or omission of Physician (or act or omission of others engaged or authorized by Physician), including any negligence, or willful misconduct, or the use of the Falcon Service in breach of this TOS and/or the Service Order; (b) infrastructure, software, hardware or network failure at Physician's site; (c) internet back-bone or other telecommunication failure.

ii.) If Physician is unable to access the Falcon Service for an unreasonable amount of time, as accurately evidenced by Physician, and determined by Company, due to an unreasonable failure caused solely by Company, Company may, at Company's sole and absolute discretion, provide Physician with certain service credits. The amount of such service credits shall be determined by Company in its sole and absolute discretion and shall be in compliance with HIPAA Safe Harbor. Physician's sole and exclusive remedy with respect to its inability to access the Falcon Service shall be the aforementioned service credits.

iii.) Company will use commercially reasonable efforts to provide forty eight (48) hours advance notice for any scheduled down time that will affect availability of the Falcon Service.

## EXHIBIT A

### BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (“Agreement”) is entered into as of the effective date of the TOS by and between Physician (“Covered Entity”) and Company, by and on behalf of its subsidiaries, affiliates, and related organizations (collectively, the “Business Associate”).

#### RECITALS

WHEREAS, Business Associate provides certain Falcon Services to Covered Entity that may require Business Associate to access, create, receive, maintain, use or transmit health information that is protected by state and/or federal law; and

WHEREAS, the Business Associate is obligated to protect the privacy and security of individually identifiable health information (“Protected Health Information” or “PHI”), including but not limited to electronic protected health information (“EPHI”), created on behalf of, received from, maintained on behalf of, or transmitted by or on behalf of Covered Entity in accordance with the Health Insurance Portability and Accountability Act of 1996 and its implementing privacy and security regulations at 45 C.F.R. Parts 160 and 164 promulgated by the U.S. Department of Health and Human Services (“HHS”), as amended by the federal Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) and its implementing regulations, including but not limited to the federal breach notification rule at 45 C.F.R. Part 164, subpart D (collectively “HIPAA”); and

WHEREAS, Covered Entity and Business Associate desire to enter into this Agreement in order to comply with HIPAA, as may be modified or amended, including future issuance of regulations and guidance by HHS, and reflect their understanding of the use, disclosure and general confidentiality obligations of Business Associate regarding PHI that it creates on behalf of, receives from or on behalf of, maintains on behalf of, or transmits by or on behalf of Covered Entity in furtherance of the Services Agreement.

NOW, THEREFORE, in consideration of the mutual promises and other consideration contained in this Agreement, the parties agree as follows:

#### 1. DEFINITIONS

Capitalized terms used herein but not otherwise defined in this Agreement shall have the same meanings as set forth in HIPAA, as may be modified or amended, including future issuance of regulations and guidance by HHS.

#### 2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

2.1 Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement, the Services Agreement or as permitted or Required by Law.

2.2 Business Associate may use and disclose PHI for the proper management and administration of Business Associate; provided that with respect to any disclosures of PHI, such disclosures are Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person agrees to notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. Business Associate may, in accordance with the Privacy Rule, de-identify Covered Entity’s PHI and further use and disclose such de-identified health information without regard to this Agreement or HIPAA. Without limitation of the foregoing, Covered Entity acknowledges that, to the extent Business Associate is also a covered entity (as such term is defined by HIPAA), the legal structure of the Business Associate and its covered entity affiliates affords Business Associate the opportunity to be designated as a participant in an affiliated covered entity arrangement (“HIPAA Arrangement”). Business Associate represents and warrants that it has been designated as a participant in such HIPAA Arrangement. As such, Covered Entity agrees that Business Associate may share Covered Entity’s PHI with other participants in the HIPAA Arrangement or their business associates, and that the

other participants in the HIPAA Arrangement may use or disclose Covered Entity's PHI in compliance with the terms of this Agreement.

2.3 Business Associate agrees to use appropriate physical, administrative and technical safeguards to prevent the use or disclosure of Covered Entity's PHI for any purpose other than the provision of Services.

2.4 Business Associate agrees to report to Covered Entity, in writing, any use or disclosure of PHI not in compliance with this Agreement.

2.5 In the event Business Associate engages any agent or Subcontractor to perform any Services and discloses PHI to such agent or Subcontractor, Business Associate will require any such agent or Subcontractor to agree to the same restrictions and conditions required in this Agreement that may be applicable to such agent or Subcontractor.

2.6 Upon written request from the Covered Entity, Business Associate agrees to make PHI available to Individuals in accordance with 45 C.F.R. Section 164.524, governing access of Individuals to their PHI.

2.7 Upon written request from the Covered Entity, Business Associate agrees to make PHI available for amendment and incorporate any amendments in accordance with 45 C.F.R. Section 164.526, governing amendments to PHI.

2.8 Upon written request from the Covered Entity, Business Associate agrees to make any and all information available for the purpose of providing Individuals an accounting of disclosures of their PHI in accordance with 45 C.F.R. Section 164.528, governing accounting of disclosures of PHI.

2.9 Business Associate agrees to make its internal practices, books and records related to the use and disclosure of Covered Entity PHI hereunder available to the Secretary of HHS for the purposes of determining Covered Entity's compliance with HIPAA.

2.10 Business Associate shall implement and maintain administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Covered Entity's EPHI in accordance with the Security Rule.

2.11 Business Associate and Covered Entity agree to comply with all applicable rules and regulations promulgated under HIPAA in effect during the Term (as defined herein),

2.12 Business Associate will report to Covered Entity, within a reasonable time period of discovery: (a) any material breach of this Agreement ("material breach"); or (b) Breach as defined at 45 C.F.R. Part 164, Subpart D. Business Associate may supplement its initial report as information becomes available in order to identify:

- a. The nature of the material breach or Breach, including how such material breach or Breach was made;
- b. The PHI that was the target of the material breach, or the unsecured PHI involved in the Breach, including the types of identifiers involved and the likelihood of re-identification;
- c. If known, the identity of the person/entity who used or received the PHI;
- d. Whether PHI was actually acquired or viewed;
- e. What corrective action Business Associate took, if any;
- f. What Business Associate did to mitigate any risk or deleterious effect; and
- g. Such other information as Covered Entity may reasonably request.

2.13 At all times during the Term, Business Associate will comply with all applicable federal, state and local laws, rules and regulations pertaining to patient records and the confidentiality of patient information, including Covered Entity's PHI To the

extent Business Associate is to carry out Covered Entity's obligation under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of the obligation.

### 3. OBLIGATIONS OF COVERED ENTITY

3.1. Covered Entity will notify Business Associate of any agreement Covered Entity makes regarding any restriction or requirement for confidential communication with respect to the use or disclosure of PHI, to the extent that such restriction agreement or confidential communication requirement may affect Business Associate's use or disclosure of PHI.

3.2. Covered Entity will: (i) use safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Business Associate by Covered Entity, until such PHI is received by Business Associate; and (ii) inform Business Associate of any consent or authorization, including any changes in or withdrawal of any such consent or authorization, provided to the Covered Entity by an Individual that would affect Business Associate's use or disclosure of the PHI.

### 4. TERM AND TERMINATION

4.1. The term of this Agreement (the "Term") shall remain in effect until such time as the Services Agreement expires or is terminated or as otherwise provided herein.

4.1.1. Except for the requirements set forth in Section 4.2, which shall survive as set forth therein, and except as otherwise provided in Section 4.1.2, this Agreement will terminate on the date that the Services Agreement is terminated or expires.

4.1.2. This Agreement may be terminated by Covered Entity upon the breach of any material provision of this Agreement by Business Associate, which breach is not corrected within thirty (30) days after written notice of such breach is given to Business Associate.

4.2. Business Associate agrees that, upon termination of this Agreement, Business Associate will return or destroy all PHI received from or created or received on behalf of Covered Entity. In the event Business Associate determines that return or destruction is not feasible, Business Associate will extend the protections required in this Agreement to the PHI and limit further uses and disclosures to only those purposes that make the return or destruction of the information infeasible.

### 5. MISCELLANEOUS

5.1. **Regulatory References:** A reference to HIPAA or the HITECH Act, or a section thereof, and its regulations and requirements means the provisions and section(s) in effect, as may be modified or amended, including by the issuance of regulations and guidance by HHS.

5.2. **Amendment:** No modification of this Agreement will be effective unless made in writing and executed by each party hereto; provided, however, both parties agree that the provisions of HIPAA and the HITECH Act, including any implementing regulations to be published by HHS, which apply to business associates, that are not otherwise addressed herein, and that are required to be incorporated into a HIPAA business associate agreement, are hereby incorporated into this Agreement as if set forth in this Agreement in their entirety and are effective as of the applicable compliance date. Notwithstanding the foregoing, the parties agree to take such action as may be Required by Law to amend this Agreement pursuant to final regulations or any amendment of HIPAA and the HITECH Act.

5.3. **Notices:** Any notices to be delivered hereunder shall be delivered to the addresses set forth in and consistent with the requirements for delivery contained in, the Services Agreement; provided, that a copy of any notice to Business Associate hereunder shall also be delivered to: Falcon, LLC, 1551 Wewatta Street, Denver, CO 80202, Attention: Privacy Office. Notice shall be in writing and shall be deemed effective when personally delivered or, if mailed, three (3) calendar days after the date deposited in the United States mail, first class, postage prepaid, to the addressee at its current business address.

5.4. **Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed an original and when taken together shall constitute one agreement.

5.5. **Choice of Law:** All issues and questions concerning the validity, enforcement and interpretation of this Agreement shall be governed by, and construed in accordance with, the laws of the state identified in the Services Agreement.

5.6. **Voluntary Execution:** Each party has read and understands this Agreement, and represents that this Agreement is executed voluntarily and should not be construed against any party hereto solely because it drafted all or a portion hereof.

5.7. **Severability:** If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision and this Agreement will be reformed, construed, and enforced as if such invalid, illegal or unenforceable provision had never been contained herein.

5.8. **Entire Agreement:** This Agreement supersedes any and all prior agreements and understandings between the parties related to the subject matter hereof.

5.9. **Independent Contractor:** None of the provisions of this Agreement are intended to create any relationship between the parties other than that of independent entities contracting with each other for the purpose of effecting the provisions of this Agreement.