

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“BAA”) is entered into \_\_\_\_\_ the “Effective Date”) by and between \_\_\_\_\_ (the “Covered Entity” as defined in 45 C.F.R. 160.103) and SmartCode (the “Business Associate” as defined in 45 C.F.R. 160.103) (each may be singularly referred to as a “Party” or collectively the “Parties”).

### **RECITALS**

A. Covered Entity is in the business of providing home health care services and services ancillary thereto which may include services such as skilled nursing, home health aides, physical therapy, speech therapy, occupational therapy, and/or medical social services to private individuals, Medicare beneficiaries, insurance company beneficiaries, and/or health maintenance organization beneficiaries.

B. Business Associate is an entity providing:

quality assurance outsourcing services to Covered Entity pursuant to the terms separately agreed to by Covered Entity and Business Associate.

C. Business Associate may be considered a “business associate” of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) including all pertinent regulations (45 CFR Parts 160 and 164) issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act, as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Publ. L. 111-5).

D. For good and lawful consideration, the receipt of which is hereby acknowledged by the Parties, the Parties are entering into this BAA for the purpose of ensuring compliance with the requirements of HIPAA, its implementing regulations, and relevant state and federal law with respect to the handling, use, and disclosure of Protected Health Information.

THEREFORE, based upon the foregoing, and in consideration of the mutual promises, representations, warranties, covenants, and agreements contained herein, the Parties agree as follows:

### **AGREEMENT**

**1. Definitions.** For purposes of this Agreement, it is understood that the below listed terms have the following meanings prescribed to them:

**A. “Business Associate”** shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Qavalo, Inc.

**B. “Covered Entity”** shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean

\_\_\_\_\_.  
(agency name)

**C. “HIPAA Rules”** shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

**D. “Protected Health Information”** shall generally have the same meaning as the term “protected health information” at 45 CFR 160.103.

**E. “Individual”** shall generally have the same meaning as the term “individual” at 45 CFR 160.103.

**F. “Secretary”** shall mean the Secretary of the Department of Health and Human Services or his/her designee.

## **2. Obligations of Business Associate.** Business Associate agrees to:

- A. Not use or disclose Protected Health Information other than as permitted or required by the BAA, the HIPAA Rules, or other applicable law;
- B. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of Protected Health Information other than as provided for by the BAA or as required by law;
- C. Report to Covered Entity any use or disclosure of Protected Health Information not provided for by the BAA of which it becomes aware, including breaches of unsecured Protected Health Information as required at 45 CFR 164.410, and any security incident of which it becomes aware;
- D. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agents, subcontractors, or employees that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;
- E. Within five days of a request by Covered Entity, make available Protected Health Information in a designated record set to the Covered Entity as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.524;
- F. Make any amendment(s) to Protected Health Information in a designated record set as directed by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.526;
- G. Maintain and make available to Covered Entity, within five days of a request by Covered Entity, information relating to any disclosures of Protected Health Information as would be required for Covered Entity to respond to a request by an Individual for an accounting under 45 CFR 164.528 of disclosures of such information;
- H. To the extent Business Associate is to carry out one or more of Covered Entity’s obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s);
- I. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

### **3. Permitted Uses and Disclosures by Business Associate.**

- A. Business Associate may only use or disclose Protected Health Information for purposes of carrying out its work for Covered Entity in accordance with the terms separately agreed to by Covered Entity and Business Associate or as required or limited by applicable law.
- B. Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.
- C. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

### **4. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions.**

- A. Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of covered entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- B. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an Individual to use or disclose his or her Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- C. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information 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 Business Associate's use or disclosure of Protected Health Information.

### **5. Term and Termination.**

- A. Term. The term of this BAA shall be effective as of the Effective Date and shall terminate (1) upon a Party's written notice to the other Party or (2) on the date Covered Entity terminates for cause as authorized in paragraph (B) of this Section, whichever is sooner.
- B. Termination for Cause. Business Associate authorizes termination of this BAA by Covered Entity if Covered Entity determines Business Associate has violated a material term of the BAA.
- C. Obligations of Business Associate Upon Termination. Upon termination of this BAA for any reason, Business Associate shall return to Covered Entity all Protected Health Information received from Covered Entity that Business Associate still maintains in any form. Business Associate shall retain no copies of the Protected Health Information.
- D. Survival. The obligations of Business Associate under this Section shall survive the termination of this BAA.

**6. Additional Provisions.**

- A. **Regulatory References.** A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended.
- B. **Amendment.** The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- C. **Interpretation.** Any ambiguity this BAA shall be interpreted to permit compliance with the HIPAA Rules.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement.

\_\_\_\_\_  
(covered entity name)

**SmartCode**

By: \_\_\_\_\_  
(signature over printed name)

By: \_\_\_\_\_  
(signature over printed name)

Title:

Title:

Date:

Date: