

## BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT (this “**Agreement**”) is made and entered into as of the \_\_\_ day of May 15, 2021 (the “**Effective Date**”) by and between \_\_\_\_\_ (“**Covered Entity**”) and Duett, Inc. (“**Duett**”) (collectively, the “**Parties**”).

WHEREAS, the Parties have entered into or will enter into a separate agreement (“**Master Terms and Conditions**”), pursuant to which Duett provides or will provide access to certain software and/or related support services to or on behalf of Covered Entity; and

WHEREAS, Covered Entity is committed to complying with the Administrative Simplification provisions (Subtitle F of Title II) of the Health Insurance Portability and Accountability Act of 1996, as amended, and its implementing regulations (“**HIPAA**”), which include the Standards for the Privacy of Individually Identifiable Health Information (the “**Privacy Rule**”), the Standards for Electronic Transactions, the Security Standards for the Protection of Electronic Protected Health Information (the “**Security Rule**”), the Breach Notification Rule, and the Enforcement Rule (45 CFR Parts 160–164), each as amended, and the Privacy provisions (Subtitle D) of the Health Information Technology for Economic and Clinical Health Act, as amended, and its implementing regulations (42 USC. §17921 et seq.), as amended, (the “**HITECH Act**”) (collectively, the “**HIPAA Rules**”) with respect to the Protected Health Information (“**PHI**”) in the possession of Covered Entity; and

WHEREAS, Duett is committed to complying with the HIPAA Rules that are applicable to Duett’s relationship with Covered Entity; and

WHEREAS, in the course of performing its obligations under the Master Terms and Conditions, Duett will have access to and/or receive from Covered Entity and/or create on behalf of Covered Entity certain PHI that can be used or disclosed only in accordance with this Agreement, the Master Terms and Conditions, and HIPAA.

NOW, THEREFORE, in consideration of the foregoing, and the mutual promises and covenants hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, Covered Entity and Duett agree as follows:

### I. DEFINITIONS; REFERENCES

All terms used in this Agreement, whether capitalized or not, that are defined by the HIPAA Rules shall have the meaning ascribed to them in the HIPAA Rules. PHI and EPHI will have the meaning ascribed to them in the HIPAA Rules, but for the purposes of this Agreement will refer solely to PHI transmitted, maintained, or received, from or on behalf of Covered Entity to Duett, or created by Duett on behalf of Covered Entity. Unless otherwise specified, PHI will include EPHI for purposes of this Agreement. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

### II. PERMITTED USES AND DISCLOSURES OF PHI

(a) Duett shall not Use or Disclose PHI other than as permitted or required by this Agreement or as Required By Law. Duett may Use and Disclose PHI as necessary to perform its obligations under the Master Terms and Conditions, except that Duett may not Use or Disclose PHI in a manner that would violate the HIPAA Rules if done by Covered Entity.

(b) Duett may Use PHI: (i) if necessary for the proper management and administration of Duett or to carry out the legal responsibilities of Duett; (ii) for the purpose of de-identifying any PHI, provided such de-identification conforms to the requirements of 45 C.F.R. 164.514(h), including without limitation any documentation requirements and may Use or Disclose such de-identified information at its discretion, as such de-identified information does not constitute PHI and is not subject to the terms of this Agreement; provided that such Use or Disclosure is otherwise consistent with this Agreement; and (iii) to provide Data Aggregation Services relating to the Health Care Operations of Covered Entity if required or permitted by this Agreement, the Master Terms and Conditions, or otherwise in writing by Covered Entity.

(c) Duett may Disclose PHI for the purposes described above in subsection (b)(i) if: the Disclosure is Required by Law; or Duett obtains reasonable assurances from the person(s) to whom the information is Disclosed that it will be held confidentially and Used or further Disclosed only as Required By Law, or for the purpose(s) for which it was Disclosed to such person(s) and that such person(s) will notify Duett of any instance where the confidentiality of the PHI has been breached.

### III. RESTRICTIONS ON THE USE AND DISCLOSURE OF PHI

Notwithstanding anything in the Master Terms and Conditions to the contrary, Duett shall:

(a) not Use or further Disclose PHI other than permitted or required by this Agreement or Required By Law;

(b) use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to EPHI to prevent Use or Disclosure of the PHI other than provided for by this Agreement;

(c) report to Covered Entity any Use or Disclosure of PHI not provided for by this Agreement, or any Security Incident of which it becomes aware, without unreasonable delay but in no event later than five (5) calendar days. The Parties acknowledge and agree that this section constitutes notice by Duett to Covered Entity of the ongoing occurrence of incidents that may constitute Security Incidents but that are trivial and do not result in unauthorized access, Use, or Disclosure of PHI, including without limitation pings and other broadcast attacks on Duett's firewall, port scans, unsuccessful log-on attempts, and denials of service, for which no additional notice to Covered Entity shall be required;

(d) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Rules;

(e) comply with Minimum Necessary requirements in accordance with the HIPAA Rules;

(f) encrypt data in accordance with guidance from the Secretary for all PHI at rest and in transmission;

(g) in accordance with 45 C.F.R. §§164.502(e)(1)(ii) and 164.308(b)(2), ensure that any Subcontractors that create, receive, maintain or transmit PHI on behalf of Duett agree to the same restrictions and conditions that apply to Duett with respect to such PHI (and, in the case of EPHI, that such Subcontractors agree to implement reasonable and appropriate safeguards to protect it);

(h) make available PHI in accordance with 45 C.F.R. §164.524;

(i) make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. §164.526;

(j) make available the information required to provide an accounting of disclosures in accordance with 45 C.F.R. §164.528;

(k) make its internal practices, books and records relating to the Use and Disclosure of PHI received from, or created or received by, Duett on behalf of Covered Entity available to the Secretary (or its delegate) for purposes of determining Covered Entity's compliance with the HIPAA Rules;

(l) report to Covered Entity any Use, Disclosure, or access to PHI that is not permitted by this Agreement or that is in violation of any provision of the HIPAA Rules, of which Duett becomes aware, including any Breach, as required by 45 C.F.R. §164.410. Notice shall be in writing and provided to Covered Entity without unreasonable delay, but in no event later than five (5) days. Such notice will include, to the extent possible, the identification of each Individual whose PHI has been or is reasonably believed by Duett to have been, accessed, acquired, Used, or Disclosed during the incident or Breach. Such notice shall also include the following information: (i) a brief description of the nature of the non-permitted access, Use, or Disclosure, including the date of the non-permitted access, Use, or Disclosure and the date of the discovery by Duett, if known; (ii) a description of the types of PHI involved in the non-permitted access, Use, or Disclosure (such as whether full name, social security

number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved); (iii) the party or parties who made the non-permitted Use, received the non-permitted Disclosure, and/or carried out or received the non-permitted access; (iv) a brief description of what Duett is doing to investigate the non-permitted Use, Disclosure, access, or Breach, to mitigate harm to Individuals, and to protect against any further non-permitted Use, Disclosure, access, or Breach; (v) contact procedures for obtaining additional information; and (vi) any other information required by the HIPAA Rules, Covered Entity, and/or the Secretary. Duett shall provide updated information to Covered Entity as such information becomes available, and shall otherwise cooperate with Covered Entity in any investigation into the unauthorized access, Use, Disclosure, and/or Breach;

(m) not transmit, Disclose, or maintain PHI outside of the United States and shall not allow anyone outside the United States to have access to PHI;

(n) take actions to mitigate, to the extent practical, any harmful effects that are known to it caused by a Use or Disclosure of PHI that is not permitted by this Agreement or failure of its obligations to safeguard PHI;

(o) to the extent Duett agrees to carry out one or more of Covered Entity's obligation(s) under the HIPAA Rules, comply with the requirements of the HIPAA Rules that apply to Covered Entity in the performance of such obligation(s); and

(p) otherwise comply with all applicable federal and state laws and regulations, including the HIPAA Rules.

#### **IV. OBLIGATIONS OF COVERED ENTITY**

Covered Entity shall:

(a) notify Duett of any limitation(s) in Covered Entity's notice of privacy practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect Duett's Use or Disclosure of PHI;

(b) notify Duett of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI, to the extent that such changes may affect Duett's Use or Disclosure of PHI;

(c) notify Duett of any restriction to the Use or Disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Duett's Use or Disclosure of PHI;

(d) not request Duett to Use or Disclose PHI in any manner that would not be permissible under HIPAA if done by Covered Entity. Notwithstanding the foregoing language, Duett may Use or Disclose PHI for Data Aggregation Services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B) or the management and administrative activities of Duett in accordance with this Agreement.

#### **V. PAYMENT OF BREACH EXPENSES AND INDEMNIFICATION**

Notwithstanding anything in the Master Terms and Conditions or any other agreement between the Parties to the contrary, Duett shall indemnify, defend and hold harmless Covered Entity, its directors, officers, partners, members, managers, employees, and agents from any and all liabilities, claims, demands, damages, fine, penalties, assessments, loss and costs (including attorney's fees) for any access, Use, or Disclosure of PHI not provided for in this Agreement and/or any violation of the HIPAA Rules by Duett or any Subcontractor, agent, employee, director, member, or other representative of Duett. In the event of a Breach arising from any action or inaction of, or otherwise directly or indirectly related to the performance or fulfillment of obligations hereunder by, Duett, or any Subcontractor, agent, employee, director, member, or other representative of Duett, Duett shall reimburse Covered Entity for all reasonable and substantiated costs and expenses incurred by Duett related to notifications to individuals and other entities required in accordance with the HIPAA Rules, including, but not limited to, costs and expenses to establish a toll free phone number and call center, and credit monitoring fees (up to one (1) year). Covered Entity will submit an invoice to Duett setting forth the costs and expenses incurred by Covered Entity and Duett shall make remit full payment of such invoiced amount to Covered Entity within thirty (30) days' of receipt of the invoice. In addition, Duett shall indemnify, defend and hold harmless Covered Entity, its directors, officers, partners, member, managers, employees, and agents from any and all liabilities, claims, demands, damages, fine, penalties, assessments, loss and costs (including attorney's fees) in connection with the performance of Duett's

obligations under this Agreement. The provisions of this Section shall survive termination or expiration of this Agreement. For the avoidance of doubt, no limitation of liability provision in the Master Terms and Conditions or any other agreement between Covered Entity and Duett shall apply to this Agreement. **Notwithstanding anything in this Agreement, the Master Terms and Conditions or any other agreement between the Parties to the contrary, the total payments made by Duett hereunder, or Duett's liability and/or indemnification obligations hereunder shall be limited to and shall not exceed the total revenue received by Duett from Covered Entity under the Master Terms and Conditions during the three (3) months prior to the Breach.**

## VI. TERM AND TERMINATION

(a) This Agreement shall commence on the Effective Date and shall remain in full force and effect for as long as the Master Terms and Conditions are in effect or until earlier terminated in accordance with this Section. No separate notice shall be required to terminate this Agreement upon termination of the Master Terms and Conditions.

(b) Notwithstanding anything in this Agreement or the Master Terms and Conditions to the contrary, if Covered Entity determines that Duett has violated a material provision of this Agreement, Covered Entity may immediately terminate this Agreement and the Master Terms and Conditions upon written notice to Duett.

(c) Upon expiration or earlier termination of this Agreement or the Master Terms and Conditions, Duett shall automatically return or destroy (at Covered Entity's sole option) all PHI received from or on behalf of Covered Entity or created by Duett on behalf of Covered Entity that Duett, and/or its agents and/or Subcontractors, still maintain in any form. Notwithstanding the foregoing, to the extent that Duett reasonably determines that it is not feasible for Duett to return or destroy such PHI, the terms and provisions of this Agreement shall survive termination and such PHI shall thereafter be Used or Disclosed by Duett solely for such purpose or purposes which prevented the return or destruction of such PHI. In addition, Duett shall extend the protections of this Agreement to any PHI retained by Duett pursuant to the foregoing for so long as the PHI is retained by Duett. Duett (and its agents and/or Subcontractors as the case may be) shall return or destroy (at the sole option of Covered Entity) any and all retained PHI as soon as it is feasible to do so. Any and all destruction of PHI under this Agreement shall be carried out in accordance with the requirements for such destruction under the HIPAA Rules.

## VII. RELATIONSHIP TO MASTER TERMS AND CONDITIONS

It is the intent of the Parties that the terms of this Agreement be interpreted so as to cause the Master Terms and Conditions to comply with the requirements of the HIPAA Rules. Accordingly, this Agreement shall amend the Master Terms and Conditions to the extent provided herein regardless of whether this Agreement formally satisfies the requirements of the Master Terms and Conditions for amendment of such Master Terms and Conditions. To the extent any provisions of this Agreement conflict with the terms of the Master Terms and Conditions, this Agreement shall control.

## VIII. MISCELLANEOUS

(a) Entire Agreement. The background recitals form a material part of this Agreement. This Agreement, along with the Master Terms and Conditions, constitutes the entire understanding and agreement between the Parties concerning the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings between the Parties, whether oral or in writing, concerning its subject matter.

(b) Amendment. This Agreement may be amended only in writing and only by the mutual consent of the Parties. Notwithstanding the foregoing, this Agreement shall automatically be amended to the extent minimally necessary to comply with any changes to the HIPAA Rules.

(c) Assignment. This Agreement may not be assigned or transferred by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns hereof. Any assignment or transfer in violation of this Agreement shall be null and void and of no power or effect.

(d) Further Assurances. Each party will cooperate with the other and execute and deliver to the other party such other instruments and documents and take such other actions as may be reasonably requested from time to time by the other party to carry out, evidence and confirm the intended purposes of this Agreement.

(e) Survival. Notwithstanding any contrary provision in this Agreement, the provisions of this Agreement shall continue in force beyond the term of this Agreement to the extent necessary or appropriate to give such provisions their intended effect for as long as Duett creates, receives, maintains, or transmits PHI.

(f) Waiver. The rights and remedies of the Parties are cumulative and not alternative. Neither the failure nor any delay on the part of any party in exercising any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or exercise of any other right, power or privilege.

(g) Governing Law. This Agreement shall be governed by the laws of the jurisdiction provided in the Master Terms and Conditions. If the Master Terms and Conditions does not specify such a jurisdiction, this Agreement shall be governed by the laws of the State of Indiana.

(h) Relationship of Parties. None of the provisions of this Agreement is intended to create nor shall be deemed or construed to create any relationship between the Parties hereto other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this Agreement.

(i) No Third Party Beneficiaries. Nothing herein is intended to give, nor shall have the effect of giving, any enforceable rights to any third parties who are not parties hereto or successors or permitted assigns of the Parties, whether such claims are asserted as third party beneficiary rights or otherwise.

(j) Counterparts. This Agreement may be executed in original or electronically in one or more duplicate counterparts each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

(k) Notice. Notices required under this Agreement shall be sent by regular mail to the address of each party set forth below or such other address as that party may designate in a notice properly delivered to the other party.

**IN WITNESS WHEREOF,** Duett and Covered Entity, each by their duly authorized representatives, have caused this Agreement to be executed and delivered as of the date first written above.

“COVERED ENTITY”

“DUETT”

\_\_\_\_\_

DUETT, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

Address:

Duett Enterprises, LLC  
8440 Woodfield Crossing Blvd., Ste. #175  
Indianapolis, Indiana 46240

Attn: \_\_\_\_\_

Attn: CEO