

## EXHIBIT B

### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BA Agreement”) is entered into by and between \_\_\_\_\_, a California \_\_\_\_\_ (“Business Associate”), and **Clever Care of Golden State Inc.**, a Delaware corporation (“Company”). Company and Business Associate are entering into this BA Agreement to address the requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, including the changes mandated by the Health Information Technology for Economics and Clinical Health Act (“HIPAA” and “HITECH Act” respectively). Any capitalized term used, but not defined, in this BA Agreement shall have the meaning set forth in the HIPAA Rules. The HIPAA Rules include the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164. The “HIPAA Privacy Rule” is at 45 C.F.R., Part 160 and Part 164, Subparts A and E. The “HIPAA Security Rule” is at 45 C.F.R. Parts 160 and 164. The “HIPAA Breach Notification Rule” is at 45 C.F.R. Part 164, Subpart D.

The parties agree that this BA Agreement supersedes any business associate agreement, addendum, attachment, or other business associate contract terms previously entered by the parties.

Business Associate represents and warrants that it is a duly formed organization and has the full right and legal authority to enter into and fully perform this BA Agreement.

#### A. **Privacy of Protected Health Information.**

1. **Permitted Uses and Disclosures.** Business Associate is permitted to use or disclose Protected Health Information (“PHI”) it creates or receives for or from Company or to request PHI on Company’s behalf only as follows:

- a) **Functions and Activities on Company’s Behalf.** Business Associate is permitted to use and disclose PHI in connection with the performance of services to Company and on Company’s behalf, including provision of tools for Company to conduct a survey to measure the physical and mental conditions of plan members, as specified in an agreement entered into between the parties (“the Agreement(s)”). Business Associate’s use, disclosure or request of Protected Health Information shall utilize a Limited Data Set if practicable. Otherwise, Business Associate will, in its performance of these services, make reasonable efforts to use, to disclose, and to request of a Covered Entity only the minimum amount of Company’s Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure or request. In addition, Business Associate agrees to implement and follow appropriate minimum necessary policies in the performance of its obligations under this BA Agreement and any other Agreement(s) entered by the parties.
- b) **Business Associate’s Operations.** Business Associate may use the Minimum Necessary PHI it creates or receives for or from Company for Business

Associate's proper management and administration or to carry out Business Associate's legal responsibilities. Business Associate may disclose the Minimum Necessary of such PHI for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities only if:

- (i) The disclosure is Required by Law; or
- (ii) Business Associate obtains reasonable assurance, evidenced by written contract, from any person or organization to which Business Associate will disclose such PHI that the person or organization will:
  - (a) Hold such PHI in confidence and use or further disclose it only for the purpose for which Business Associate disclosed it to the person or organization or as Required by Law; and
  - (b) Within five (5) days, notify Business Associate (who will in turn promptly notify Company) of any instance of which the person or organization becomes aware in which the confidentiality of such PHI was breached.

2. **Incorporation of Privacy Provisions.** Business Associate acknowledges and agrees that it shall comply with the provisions set forth in 45 C.F.R. §164.504(e), which is incorporated herein by reference, as well as any additional obligations defined in the Agreement(s) entered by the parties.
3. **Prohibition on Unauthorized Use or Disclosure.** Business Associate will neither use nor disclose PHI it creates or receives for or from Company or from another business associate of Company, except as permitted by this BA Agreement. Without limiting the foregoing, Business Associate acknowledges and agrees that it shall not use or disclose any PHI for purposes of Marketing. Additionally, absent Company's prior written consent, Business Associate shall not disclose PHI outside the United States.
4. **Sale of PHI.** Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, unless such remuneration is permitted by a contract between Business Associate and Company and is consistent with applicable law.
5. **Data Aggregation and De-Identification.** Business Associate shall not de-identify any PHI received from or created on behalf of Company unless explicitly and specifically permitted by the Agreement(s) entered by the parties or otherwise in writing by Company. Business Associate shall not engage in data aggregation activities unless explicitly and specifically permitted by the Agreement(s) or otherwise in writing by Company and consistent with applicable law.

**B. Security of Protected Health Information.**

Business Associate will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards ("Safeguards") to protect the privacy of Company's Protected Health Information. The safeguards must reasonably protect

Company's Protected Health Information from any intentional or unintentional use or disclosure in violation of the Privacy Rule, 45 C.F.R. Part 164, Subpart E and this BA Agreement, and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this BA Agreement.

**1. Safeguards for Securing Electronic PHI.**

- a) Business Associate will maintain and use appropriate administrative, technical, and physical safeguards, in compliance with the HIPAA Security Rule, standard business practices, any other applicable regulations governing privacy and security and/or any instructions or guidelines issued by Company that are provided, to preserve the integrity, availability and confidentiality of, and to prevent non-permitted or violating use or disclosure of, Electronic PHI created or received for or from Company. Additionally, Business Associate shall develop and implement policies and procedures to meet the HIPAA Security Rule documentation requirements.
- b) Business Associate will document and keep these Safeguards current and shall notify Company of all significant changes to such Safeguards. These Safeguards shall extend to transmission, processing, and storage of Electronic PHI. Transmission of Electronic PHI shall include transportation of storage media, such as magnetic tape, disks or compact disk media, from one location to another.

**C. Agents and Subcontractors.** Business Associate will require its agents and subcontractors to which Business Associate discloses PHI created or received by Business Associate for or from Company to provide reasonable assurance, evidenced by written contract, that, with respect to such PHI, such agents or subcontractors will comply with the same privacy and security requirements with which Business Associate is required to comply and will not further disclose such PHI.

**D. PHI Access, Amendment and Disclosure Accounting.**

- 1. **Access.** Business Associate will, within seven (7) days after Company's request, make available to Company for inspection and obtaining copies any PHI about the individual that Business Associate created or received for or from Company and maintains in a Designated Record Set so that Company may meet its access obligations under 45 C.F.R. § 164.524. Business Associate shall make such information available in an electronic format upon Company's request.
- 2. **Amendment.** Business Associate will, within seven (7) days after Company's request, promptly amend any portion of the PHI that Business Associate created or received for or from Company and maintains in a Designated Record Set, so that Company may meet its amendment obligations under 45 C.F.R § 164.526.
- 3. **Disclosure Accounting.** So that Company may meet its disclosure accounting obligations under 45 C.F.R. § 164.528:

- a) Disclosure Tracking. For each disclosure which Business Associate makes of PHI that it creates or receives for or from Company and which is subject to the disclosure accounting requirements of the HIPAA Privacy Rule, Business Associate will record the following: (i) the disclosure date, (ii) the name, date of birth, gender, Company ID number (including prefix) and (if known) address of the person or entity to whom Business Associate made the disclosure, (iii) a brief description of the PHI disclosed, (iv) a brief statement of the purpose of the disclosure, and (v) additional information as may be required by applicable law (items i-v, collectively, the “disclosure information”). For repetitive disclosures Business Associate makes to the same person or entity (including Company) for a single purpose, Business Associate may provide (x) the disclosure information for the first of these repetitive disclosures, (y) the frequency, periodicity or number of these repetitive disclosures, and (z) the date of the last of these repetitive disclosures. Business Associate will make this disclosure information available to Company within seven (7) days after Company’s request.
- b) Disclosure Tracking Time Periods. With respect to the disclosure tracking required by Paragraph D.3(a), Business Associate must have the disclosure information available for the 6 years preceding Company’s request.

4. **Inspection of Books and Records.** Business Associate will make its internal practices, books, and records, relating to its use and disclosure of the PHI it creates or receives for or from Company, available to Company and to the U.S. Department of Health and Human Services to determine compliance with the HIPAA Rules or this BA Agreement.

E. **Requests for Privacy Protection.** Company will notify Business Associate of any requests for privacy protection for PHI which Company receives in accordance with 45 C.F.R. § 164.522 and agrees to which will impact Business Associate’s uses and disclosures of PHI. Business Associate agrees to comply with all such restrictions about which it receives notice from Company.

F. **Breach of Obligations.**

1. **Reporting.** Business Associate will report to Company any Security Incident affecting Company’s PHI, Breach or other use or disclosure of PHI not permitted by this BA Agreement (collectively, “Unauthorized Event”). This obligation to report a Breach shall include any unauthorized acquisition, access, use, or disclosure, even where Business Associate has determined that such unauthorized acquisition, access, use, or disclosure does not compromise the security or privacy of such information, unless such acquisition, access, use or disclosure is excluded from the definition of breach in 45 C.F.R. § 164. 402. Where Business Associate has determined that there has been no compromise of such information, it also shall provide to Company any risk assessment performed in connection with its

determination. Business Associate will make the report to Company's Privacy Office within five (5) days after Business Associate learns of the Unauthorized Event and will include in such report at least:

- a) The identity of each individual whose PHI was subject to the Unauthorized Event;
- b) Identify the nature of the Unauthorized Event;
- c) Identify the PHI involved in the Unauthorized Event;
- d) Identify who used or received PHI as a result of the Unauthorized Event;
- e) Identify what corrective action Business Associate took or will take to prevent further events similar to the Unauthorized Event;
- f) Identify what Business Associate did or will do to mitigate any deleterious effect of the Unauthorized Event;
- g) Provide the date of the Unauthorized Event, including a written report, as Company may reasonably request;
- h) Identify whether the PHI subject to the Unauthorized Event was Unsecured; and
- i) Provide such other information, including a written report, as Company may reasonably request.

2. **Mitigation.** In the event of any Unauthorized Event, Business Associate agrees to use its best efforts to promptly cure such event and mitigate any harmful effects therefrom. If, as a result of any Unauthorized Event, Company determines, in its own discretion, that it is appropriate to provide credit monitoring or deems the provision of credit monitoring to be reasonable and appropriate given the nature of the event, Business Associate agrees to pay for the costs of the credit monitoring for affected individuals. Similarly, if as a result of any Unauthorized Event, Company is required by applicable law or contractual obligations to notify impacted individuals, or otherwise deems such notification appropriate in Company's discretion, Business Associate agrees to reimburse Company's reasonable costs associated with such notifications or, at Company's election, provide the notification directly.

3. **Termination of Agreement.**

- a) **Company's Right to Terminate for Breach.** In addition to all other remedies available at law or in equity, Company may terminate any agreement or relationship Company has with Business Associate if it determines, in its sole discretion, that Business Associate has breached any provision of this BA Agreement. Company may exercise this right to

terminate by providing Business Associate written notice of termination and stating the breach of the BA Agreement that provides the basis for the termination. Any such termination will be effective immediately or at such other date specified in Company's notice of termination. If for any reason Company determines that Business Associate has breached the terms of this BA Agreement and such breach has not been cured, but Company determines that termination of an agreement or relationship with Business Associate is not feasible, Company may report such breach to the U.S. Department of Health and Human Services.

b) Obligations upon Termination.

- (i) Return or Destruction. Upon termination, expiration or other conclusion of the agreements and relationship between Company and Business Associate, Business Associate will, if feasible, return to Company or destroy all PHI, in whatever form or medium (including in any electronic medium under Business Associate's custody or control), that Business Associate created or received for or from Company, including all copies of and any data or compilations derived from and allowing identification of any individual who is a subject of the PHI. Business Associate will complete such return or destruction as promptly as possible, but not later than twenty (20) days after the effective date of the termination, expiration or other conclusion of the BA Agreement. If such return or destruction of records is not feasible, Business Associate will notify Company of any PHI for which return or destruction is not feasible. For all such PHI where Company agrees that such return or destruction is infeasible, Business Associate will limit its further use or disclosure of that PHI to those purposes that make return or destruction of that PHI infeasible. Within twenty (20) days after the effective date of the termination, cancellation, expiration or other conclusion of the agreements and relationship between company and Business Associate, Business Associate will certify on oath in writing to Company that such return or destruction has been completed, and will deliver to Company the identification of any PHI for which return or destruction is infeasible and, for that PHI, will certify that it will only use or disclose such PHI for those purposes that make return or destruction infeasible.
- (ii) Continuing Obligations. Business Associate's indemnification and mitigation obligations and obligation to protect the privacy and security of the PHI it created, received, maintained or transmitted for or from Company will be continuous and survive termination, cancellation, expiration or other conclusion of this BA Agreement or any agreement or relationship between Company and Business Associate.

4. **Indemnity.** Business Associate will indemnify and hold harmless Company and any Company affiliate, officer, director, employee or agent from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted or violating use or disclosure of PHI or other breach of this BA Agreement by Business Associate or any subcontractor, agent, person or entity under Business Associate's control.

G. **Confidentiality.** Business Associate acknowledges that, in the course of providing services to Company, it may have access to Confidential Information of Company. The term Confidential Information shall include, without limitation, provider information, processes, know-how, intellectual property, pricing policies, financial information, or other information, owned by or relating to Company, or which has been acquired by Company under terms limiting or protecting the disclosure thereof. Business Associate acknowledges that Company's Confidential Information is confidential and proprietary and Business Associate shall not disclose the Confidential Information to any third party without the prior written consent of Company. Additionally, Business Associate shall not utilize the Confidential Information for any purpose other than as may be necessary to perform the services for Company which Business Associate was retained to perform. Business Associate shall adopt policies and procedures as may be reasonably necessary to assure the confidentiality and safekeeping of the Confidential Information in its possession. Business Associate will monitor each employee or agent who has access to the Confidential Information and will take all appropriate action to maintain strict security with respect to the Confidential Information.

H. **Amendment to Agreement.** Upon the effective date of any final regulation or amendment to final regulations promulgated by the U.S. Department of Health and Human Services with respect to PHI, this BA Agreement and the Agreement(s) to which it refers will automatically amend such that the obligations they impose on Business Associate remain in compliance with these regulations.

**IN WITNESS WHEREOF,** Company and Business Associate execute this BA Agreement in multiple originals to be effective on the last date written below.

**[Business associate]**

**Clever Care of Golden State Inc.**

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

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

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