

BUSINESS ASSOCIATE CONTRACT

THIS CONTRACT is entered into on this _____ day of _____, 2003, between [NAME OF ORGANIZATION] (“COVERED ENTITY”) and [NAME OF VENDOR] (“BUSINESS ASSOCIATE”).

WITNESSETH:

WHEREAS, COVERED ENTITY will make available and/or transfer to BUSINESS ASSOCIATE certain Information, in conjunction with goods or services that are being provided by BUSINESS ASSOCIATE to COVERED ENTITY, that is confidential and must be afforded special treatment and protection.

WHEREAS, BUSINESS ASSOCIATE will have access to and/or receive from COVERED ENTITY certain Information that can be used or disclosed only in accordance with this Contract and the HHS Privacy and Security Regulations.

NOW, THEREFORE, COVERED ENTITY and BUSINESS ASSOCIATE agree as follows:

1. **Definitions.** The following terms shall have the meaning ascribed to them in this Section. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear.
 - i. Contract shall refer to this document.
 - ii. BUSINESS ASSOCIATE shall mean [name of organization receiving the Information]
 - iii. COVERED ENTITY shall mean [name of organization providing/making available the Information]
 - iv. HHS Privacy Regulations shall mean the Code of Federal Regulations (“C.F.R.”) at Title 45, Sections 160 and 164.
 - v. Individual shall mean the person who is the subject of the Information, and has the same meaning as the term “individual” is defined by 45 C.F.R. 164.501.
 - vi. Information shall mean any “health information” in written, oral or electronic form provided and/or made available by COVERED ENTITY to BUSINESS ASSOCIATE.
 - vii. Parties shall mean BUSINESS ASSOCIATE and COVERED ENTITY.
 - viii. Secretary shall mean the Secretary of the Department of Health and Human Services (“HHS”) and any other officer or employee of HHS to whom the authority involved has been delegated.

2. **BUSINESS ASSOCIATE OBLIGATIONS :**

3. **Limits on Use and Disclosure Established By Terms of Contract.** BUSINESS ASSOCIATE hereby agrees that it shall be prohibited from using or disclosing the Information provided or made available by COVERED ENTITY for any purpose other than as expressly permitted or required by this Contract. (ref. 164.504(e)(2)(i).)

4. **Stated Purposes for Which BUSINESS ASSOCIATE May Use or Disclose Information.** The Parties hereby agree that BUSINESS ASSOCIATE shall be permitted to use and/or disclose information provided or made available from COVERED ENTITY for the following stated purposes:

[Include a general statement describing the stated purposes that BUSINESS ASSOCIATE may use or disclose the Information. These uses and disclosures must be within the scope of the BUSINESS ASSOCIATE's representation of the COVERED ENTITY.] (ref. 164.504(e)(2)(i); 65 Fed. Reg. 82505.)

5. **Additional Purposes for Which BUSINESS ASSOCIATE May Use Or Disclose Information.** In addition to the Stated Purposes for which BUSINESS ASSOCIATE may use or disclose Information described in clause 3, BUSINESS ASSOCIATE may use or disclose Information provided or made available from COVERED ENTITY for the following additional purpose(s):

i. **Use of Information For Management, Administration and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to use Information if necessary for the proper management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE. (ref. 164.504(e)(4)(i)(A-B)).

ii. **Disclosure of Information For Management, Administration and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to disclose Information received from COVERED ENTITY for the proper management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE, provided:

iii. The disclosure is required by law; or

the BUSINESS ASSOCIATE obtains written assurances from the person 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 purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person immediately notifies the BUSINESS ASSOCIATE of any instance of which it is aware in which the confidentiality of the information has been breached. (ref. 164.504(e)(4)(ii).

6. **Limits on Use and Further Disclosure Established By Contract And Law.** BUSINESS ASSOCIATE hereby agrees that the information provided or made available by COVERED ENTITY shall not be further used or disclosed other than as permitted or required by the Contract or as required by law. (ref. 45 C.F.R. 164.504(e)(2)(ii)(A))

7. **Appropriate Safeguards.** BUSINESS ASSOCIATE will establish and maintain appropriate safeguards to prevent any use or disclosure of the Information, other than as provided for by this Contract. (ref. 164.504(e)(2)(ii)(B))
8. **Reports of Improper Use Or Disclosure.** BUSINESS ASSOCIATE hereby agrees that it shall report to COVERED ENTITY within two (2) days of discovery any use or disclosure of Information not provided for or allowed by this Contract. (ref. 164.504(e)(2)(ii)(C))
9. **Sub Contractors and Agents.** BUSINESS ASSOCIATE hereby agrees that anytime Information is provided or made available to any subContractors or agents, BUSINESS ASSOCIATE must enter into a subContract with the subContractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of Information as contained in this Contract. (ref. 164.504(e)(2)(ii)(D))
10. **Right of Access to Information.** BUSINESS ASSOCIATE hereby agrees to make available and provide a right of access to Information by an Individual. This right of access shall conform with and meet all of the requirements of 45 C.F.R. 164.524, including substitution of the words “Covered Entity” with BUSINESS ASSOCIATE where appropriate. (ref. 164.504(e)(2)(ii)(E))
11. **Amendment and Incorporation of Amendments.** BUSINESS ASSOCIATE agrees to make Information available for amendment and to incorporate any amendments to information in accordance with 45 C.F.R. 164.526, including substitution of the words “Covered Entity” with BUSINESS ASSOCIATE where appropriate. (ref. 164.504(e)(2)(ii)(F))
12. **Provide Accounting.** BUSINESS ASSOCIATE agrees to make Information available as required to provide an accounting of disclosures in accordance with 45 C.F.R. 164.528, including substitution of the words “Covered Entity” with BUSINESS ASSOCIATE where appropriate. (ref. 164.504(e)(2)(ii)(G))
13. **Access to Books and Records.** BUSINESS ASSOCIATE hereby agrees to make its internal practices, books, and records relating to the use or disclosure of Information received from, or created or received by BUSINESS ASSOCIATE on behalf of the COVERED ENTITY, available to the Secretary or the Secretary’s designee for purposes of determining compliance with the HHS Privacy Regulations. (ref. 164.504(e)(2)(ii)(H))
14. **Return or Destruction of Information.** At termination of this Contract, BUSINESS ASSOCIATE hereby agrees to return or destroy all Information received from, or created or received by BUSINESS ASSOCIATE on behalf of COVERED ENTITY. BUSINESS ASSOCIATE agrees not to retain any copies of the Information after termination of this Contract. If return or destruction of the Information is not feasible, BUSINESS ASSOCIATE agrees to extend the protections of this Contract for as long as necessary to protect the Information and to limit any further use or disclosure. If BUSINESS ASSOCIATE elects to destroy the Information, it shall certify to COVERED ENTITY that the Information has been destroyed. (ref. 164.504(e)(2)(ii)(I))
15. **Mitigation Procedures.** BUSINESS ASSOCIATE agrees to have procedures in place for mitigating, to the maximum extent practicable, any deleterious effect from the use or disclosure of Information in a manner contrary to this Contract or the HHS Privacy Regulations. (ref. 164.530(f))

16. **Sanction Procedures.** BUSINESS ASSOCIATE agrees and understands that it must develop and implement a systems of sanctions for any employee, subContractor or agent who violates this Agreement or the HHS Privacy Regulations. (optional, see 164.530(e)(1))
17. **Administrative, Physical, and Technical Safeguards.** BUSINESS ASSOCIATE agrees to protect the confidentiality, integrity and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the COVERED ENTITY.
18. **Security Incidents.** BUSINESS ASSOCIATE agrees to report to the COVERED ENTITY any security incidents it becomes aware of.
19. **Property Rights.** The Information shall be and remain the property of COVERED ENTITY. BUSINESS ASSOCIATE agrees that it acquires no title or rights to the Information, including any de-identified information, as a result of this Contract.
20. **Termination of Contract.** BUSINESS ASSOCIATE agrees that COVERED ENTITY has the right to immediately terminate this Contract and seek relief under the Disputes Article if COVERED ENTITY determines that BUSINESS ASSOCIATE has violated a material term of this Contract. (ref. 164.506(e)(2)(iii)).
21. **Grounds for Breach.** Any non-compliance by BUSINESS ASSOCIATE with this Contract or the HHS Privacy Regulations will automatically be considered to be a Grounds for Breach, if BUSINESS ASSOCIATE knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-compliance.
22. **Choice of Law.** This Contract shall be governed by the law of the State of _____. [The Parties also agree that for purposes of privacy rights, the HHS Privacy Regulations shall supersede all applicable state laws.]
23. **Disputes.** Any controversy or claim arising out of or relating to the Contract will be finally settled by compulsory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”), except for injunctive relief as described below in article [or in court of competent jurisdiction].
24. **Injunctive Relief.** Notwithstanding any rights or remedies provided for in this Contract, COVERED ENTITY retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of Information by BUSINESS ASSOCIATE or any agent, Contractor or third party that received Information from BUSINESS ASSOCIATE.
25. **Binding Nature and Assignment.** This Contract shall be binding on the Parties hereto and their successors and assigns, but neither Party may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.
26. **Notices.** Whenever under this Contract one party is required to give notice to the other, such notice shall be deemed given if mailed by First Class United States mail, postage prepaid, and addressed as follows: (optional)

COVERED ENTITY: [Name/Address]

BUSINESS ASSOCIATE: [Name/Address]

Either Party may at any time change its address for notification purposes by mailing a notice stating the change and setting forth the new address.

27. **Force Majeure.** BUSINESS ASSOCIATE shall be excused from performance under this Contract for any period BUSINESS ASSOCIATE is prevented from performing any services pursuant hereto, in whole or in part, as a result of an Act of God, war, civil disturbance, court order, labor dispute or other cause beyond its reasonable control, and such nonperformance shall not be grounds for termination.
28. **Attorney's fees.** Except as otherwise specified in this Contract, if any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of this Contract, each party shall bear their own legal expenses and the other cost incurred in that action or proceeding.
29. **Entire Agreement.** This Contract consists of this document, and constitutes the entire agreement between the Parties. There are no understandings or agreements relating to this agreement which are not fully expressed in this Contract and no change, waiver or discharge of obligations arising under this Contract shall be valid unless in writing and executed by the Party against whom such change, waiver or discharge is sought to be enforced.

The term of this Contract shall commence as of _____ (the "Effective Date"), and shall expire when all of the Information provided by COVERED ENTITY to BUSINESS ASSOCIATE is destroyed or returned to COVERED ENTITY pursuant to Clause 11.

IN WITNESS WHEREOF, BUSINESS ASSOCIATE and COVERED ENTITY have caused this Contract to be signed and delivered by their duly authorized representatives, as of the date set forth above.

BUSINESS ASSOCIATE

COVERED ENTITY

By: _____

By: _____

Print Name: _____

Print Name: _____

Title : _____

Title: _____

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