

4-D MANAGEMENT SYSTEMS, INC. BUSINESS ASSOCIATE CONTRACT FOR PARTICIPATING PHARMACIES

This Business Associate Contract (“Contract”) is between 4-D Management Systems, Inc. and/or its client (“Covered Entity”) and participating pharmacy (“Business Associate”), and refers to the existing underlying agreement between the Parties, if applicable.

BACKGROUND

Covered Entity is, or may be, subject to the Standards for Privacy of Individually Identifiable Health Information (referred to as the “HIPAA Privacy Rule”), which are set forth at 45 CFR Parts 160 and 164. These regulations are promulgated by the Department of Health and Human Services (DHHS) pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Public Law 104-191. The Privacy Rule governs certain third parties known as “Business Associates,” which are persons or parties other than a member of Covered Entity’s workforce who perform or assist a function or activity on behalf of Covered Entity involving the Use or Disclosure of Protected Health Information (“PHI”) of Individuals maintained and/or used by Covered Entity to satisfy third party contractual obligations. The purpose of this Contract is to set forth the general terms and conditions under which the PHI shall be maintained, used and disclosed by participating pharmacy Business Associate.

TERMS

Covered Entity and Business Associate (“Parties”) agree as follows:

1. Definitions. In addition to those terms already defined, the capitalized terms summarized in Appendix A, when used in this Contract, will have the same meaning as those terms in the Privacy Rule unless the context requires otherwise.
2. Obligations and Activities of Business Associate.
 - 2.1 Use and Disclosure of PHI. Business Associate will not Use or Disclose PHI received from, or created or received by Business Associate on behalf of Covered Entity, other than as permitted or required by the 4-D Pharmacy Agreement, this Contract, future Amendments to the Pharmacy Agreement, or as otherwise may be Required by Law. Business Associate understands and agrees that it shall be required to timely undertake and implement all such appropriate and/or necessary administrative, physical, technical and

all other required safeguards which, from time to time, are necessary to protect the confidentiality, integrity and access through implementation of technological devices and mechanisms to facilitate transmission, though electronic devices or otherwise to protect all PHI whether received from, created, maintained, transmitted or otherwise used by or on behalf of covered entity.

- 2.2 Safeguards Against Misuse of Information. Business Associate will use appropriate safeguards to prevent the Use or Disclosure of PHI other than as provided for by this Contract and/or the Pharmacy Agreement, not in conflict with legal requirements.
- 2.3 Mitigation of Harmful Effects. Business Associate will employ its best good faith efforts to mitigate, to the extent practicable, any harmful effect that is or should be known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this Contract, or the Pharmacy Agreement.
- 2.4 Reporting of Disclosures of Protected Health Information. Business Associate will report to Covered Entity , immediately, orally and in writing, any actual or suspected Use, Disclosure, theft or other security breach or unauthorized use or disclosure of PHI not provided for by this Contract of which Business Associate becomes aware.
- 2.5 Disclosures to Agents and Subcontractors. Business Associate will ensure that any agent, third person or entity, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, at minimum agrees to the same restrictions and conditions that apply through this Contract to Business Associate with respect to such PHI. An agent or subcontractor, for the purposes of this Contract, includes any person to whom Business Associate delegates a function, activity or service that Business Associate has agreed to perform for Covered Entity. It is Business Associate's responsibility and obligation to make certain, through contract or otherwise (as may be necessary or required) that any and all third parties to whom it provides or grants access electronically or through other and further technical instrumentations of communication and informational transmission and maintenance, shall be required to implement and maintain necessary, reasonably and appropriate safeguards for the complete protection of all electronically transmitted PHI.
- 2.6 Requests to Access Designated Record Sets. If Business Associate receives PHI from Covered Entity in a Designated Record Set, then Business Associate will provide access to PHI in a Designated Record

Set to Covered Entity within ten (10) days of receipt of a request for access or, as directed by Covered Entity, to an Individual within thirty (30) days of a request for access, in order to meet the access requirements under 45 CFR §164.524.

2.7 Requests to Amend Designated Record Sets. If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate will make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 in the time and manner designated by Covered Entity.

2.8 Availability of Books and Records. Business Associate will, upon Covered Entity's written request or as otherwise Required By Law, make its internal practices, books, and records, including policies and procedures and PHI, relating to the Use and Disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to the Covered Entity, or to the Secretary of the United States Department of Health and Human Services ("Secretary"), in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule. Further, Business Associate shall maintain all privacy and security policies, procedures and documentation in writing as may from time to time be required by law, and to enable covered entity to substantiate its compliance with all applicable laws.

2.9 Disclosure Accounting. Business Associate will document Disclosure of PHI and information related to that Disclosure as would be required for Covered Entity to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.

2.9.1 Business Associate will provide to Covered Entity or an Individual, within thirty (30) days of a request, information collected in accordance with Section 2.9 of this Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.

3. Permitted Uses and Disclosures by Business Associate. Except as otherwise limited in this Contract, Business Associate may Use or Disclose PHI on behalf of, or to provide services to, Covered Entity for the following purposes, if the Use or Disclosure of PHI would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of

Covered Entity:

- 3.1 Provision of Services. Business Associate may Use or Disclose PHI to perform legal services for Covered Entity, but only if the Use or Disclosure would not violate the Privacy Rule if it was done by Covered Entity.
 - 3.2 Uses for Business Associate Management and Administration. Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate.
 - 3.3 Disclosures for Business Associate Management and Administration. Business Associate may use PHI for the proper management and administration of Business Associate provided that:
 - 3.3.1 The Disclosures are Required by Law; or
 - 3.3.2 Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - 3.4 Data Aggregation Services. Except as otherwise limited in this Contract, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 CFR §164.504(e)(2)(I)(B).
 - 3.5 Report of Violations. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).
4. Obligations of Covered Entity.
- 4.1 Notice to Business Associate. Covered Entity will notify Business Associate of any limitation(s) in its Notice of Privacy Practices to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.
 - 4.2 Changes in or Revocation of Permission to Use or Disclose PHI. Covered Entity will notify Business Associate of any changes in, or

revocation of, permission by an Individual to Use or Disclose PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.

4.3 Restrictions to the Use or Disclosure of PHI. Covered Entity will notify Business Associate 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 Business Associate's Use or Disclosure of PHI.

5. Term and Termination.

5.1 Term. The Term of this Contract shall be effective as of April 14, 2003, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

5.2 Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide a reasonable opportunity for Business Associate to cure the breach or end the violation. If cure is not possible or if Business Associate does not cure the breach or end the violation within thirty (30) days, as specified by Covered Entity, Covered Entity may immediately terminate Business Associate's services. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary of the United States Department of Health and Human Services.

5.3 Effect of Termination of Contract.

5.3.1 Except as provided in paragraph 6.3.2 of this section, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

5.3.2 In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall

provide to Covered Entity notification of the conditions that make return or destruction infeasible. If return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

6. Miscellaneous.

- 6.1 Regulatory References. A reference in this Contract to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- 6.2 Amendment. The Parties will amend this Contract as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- 6.3 Survival. The respective rights and obligations of Business Associate under Section 6.3 of this Contract shall survive the termination of this Contract.
- 6.4 Interpretation. Any ambiguity in this Contract shall be resolved to permit Covered Entity to comply with the Privacy Rule.