

Datacon Management, Inc.

BUSINESS ASSOCIATE AGREEMENT

This Agreement is entered into by and between Practice Name here after **Health Care Provider** and **Datacon Management, Inc.** here after **DATACON** to set forth the terms and conditions under which "protected health information", as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Regulations enacted thereunder, created or received by **DATACON** on behalf of **Health Care Provider** may be used or disclosed.

This Agreement shall commence on ___ day of _____, 2003 and the obligations herein shall continue in effect so long as **DATACON** uses, discloses, creates or otherwise possesses any protected health information created or received on behalf of **Health Care Provider** and until all protected health information created or received by **DATACON** on behalf of **Health Care Provider** is destroyed or returned to **Health Care Provider** pursuant to Paragraph 15 herein.

BACKGROUND STATEMENT

- A. **DATACON**, as recipient of Protected Health Information from a Health Care Provider, Submitter, is a "Business Associate" as that term is defined in HIPAA and the HIPAA Regulations and must properly safeguard Protected Health Information pursuant to a written agreement (see HIPAA Regulations, particularly 45 CFR § 164.504(e)); and

IN CONSIDERATION OF THE FOREGOING, the parties agree as follows:

- 1) **Health Care Provider** and **DATACON** hereby agree that **DATACON** shall be permitted to use and/or disclose protected health information created or received on behalf of **Health Care Provider** for the following purpose(s):
 - a) *Convert existing Health Care Provider data to the DATACON formats and database for the purpose of implementing or updating DATACON applications at Health Care Provider.*
 - b) *Database conversion in the event of a sale, acquisition, or other reorganization of a Health Care Provider's practice.*
 - c) *Install or upgrade Health Care Provider's applications and or network hardware or software.*
 - d) *Troubleshoot system and application problems at the request of the Health Care Provider.*
 - e) *Train Health Care Provider's personnel in the operation of the DATACON application.*
 - f) *Design and develop custom reports requested by the Health Care Provider.*
- 2.) **DATACON** may use and disclose protected health information created or received by **DATACON** on behalf of **Health Care Provider** if necessary for the proper management and administration of **DATACON** or to carry out **DATACON's** legal responsibilities, provided that any disclosure is:
 - a) Required by law, or
 - b) **DATACON** obtains reasonable assurances from the person to whom the protected health information is disclosed that (i) the protected health information will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person; and (ii) **DATACON** will be notified of any instances of which the person is aware in which the confidentiality of the information is breached.
- 3.) **DATACON** hereby agrees to maintain the security and privacy of all protected health information in a manner consistent with **California** and federal laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and Regulations thereunder, and all other applicable law.

- 4.) **DATACON** further agrees not to use or disclose protected health information (as defined in 45 CFR § 164.504) except as expressly permitted by this Agreement, applicable law, or for the purpose of managing **DATACON's** own internal business processes consistent with Paragraph 2 herein.
- 5.) **DATACON** shall not disclose protected health information to any member of its workforce unless **DATACON** has advised such person of **DATACON's** privacy and security obligations under this Agreement, including the consequences for violation of such obligations. **DATACON** shall take appropriate disciplinary action against any member of its workforce who uses or discloses protected health information in violations of this Agreement and applicable law.
- 6.) **DATACON** shall not disclose protected health information created or received by **DATACON** on behalf of **Health Care Provider** to a person, including any agent or subcontractor of **DATACON** but not including a member of **DATACON's** own workforce, until such person agrees in writing to be bound by the provisions of this Agreement and applicable **California** or Federal law.
- 7.) **DATACON** agrees to use appropriate safeguards to prevent use or disclosure of protected health information not permitted by this Agreement or applicable law.
- 8.) **DATACON** agrees to maintain a record of all disclosures of protected health information, including disclosures not made for the purposes of this Agreement. Such record shall include the date of the disclosure, the name and, if known, the address of the recipient of the protected health information, the name of the individual who is the subject of the protected health information, a brief description of the protected health information disclosed, and the purpose of the disclosure. **DATACON** shall make such record available to an individual who is the subject of such information or **Health Care Provider** within five (5) days of a request and shall include disclosures made on or after the date which is six (6) years prior to the request or April 14, 2003, whichever is later.
- 9.) **DATACON** agrees to report to **Health Care Provider** any unauthorized use or disclosure of protected health information by **DATACON** or its workforce or subcontractors and the remedial action taken or proposed to be taken with respect to such use or disclosure.
- 10.) **DATACON** agrees to make its internal practices, books, and records relating to the use and disclosure of protected health information received from **Health Care Provider**, or created or received by **DATACON** on behalf of **Health Care Provider**, available to the Secretary of the United States Department of Health and Human Services, for purposes of determining the Covered Entity's compliance with HIPAA.
- 11.) Within thirty (30) days of a written request by **Health Care Provider**, **DATACON** shall allow a person who is the subject of protected health information, such person's legal representative, or **Health Care Provider** to have access to and to copy such person's protected health information as required by, and subject to the exceptions set forth in 45 CFR §164.524 maintained by **DATACON**. **DATACON** shall provide protected health information in the format requested by such person, legal representative, or practitioner unless it is not readily producible in such format, in which case it shall be produced in standard hard copy format.
- 12.) **DATACON** agrees to amend, pursuant to a request by **Health Care Provider**, protected health information maintained and created or received by **DATACON** on behalf of Practitioner. **DATACON** further agrees to complete such amendment within thirty (30) days of a written request by **Health Care Provider**, and to make such amendment as directed by **Health Care Provider** in accordance with, as required by and subject to 45 CFR §164.526.
- 13.) In the event **DATACON** fails to perform the obligations under this Agreement, **Health Care Provider** may, at its option:
 - a) Require **DATACON** to submit to a plan of compliance, include **DATACON**, as **Health Care Provider**, in its sole discretion, determines necessary to maintain compliance with this

Agreement and applicable law. Such plan shall be incorporated into this Agreement by amendment hereto; and

- b) Require **DATACON** to mitigate any loss occasioned by the unauthorized disclosure or use of protected health information.
 - c) Immediately discontinue providing protected health information to **DATACON** with or without written notice to **DATACON**.
- 14.) **Health Care Provider** may immediately terminate this Agreement and related agreements if **Health Care Provider** determines that the **DATACON** has breached a material term of this Agreement. Alternatively, **Health Care Provider** may choose to: (i) provide **DATACON** with ten (10) days written notice of the existence of an alleged material breach; and (ii) afford the **DATACON** an opportunity to cure said alleged material breach to the satisfaction of **Health Care Provider** within ten (10) days. **DATACON's** failure to cure shall be grounds for immediate determination of this Agreement. **Health Care Provider's** remedies under this Agreement are cumulative, and the exercise of any remedy shall not preclude the exercise of any other.
- 15.) Upon termination of this Agreement, **DATACON** shall return or destroy all protected health information received from **Health Care Provider**, or created or received by **DATACON** on behalf of **Health Care Provider** and that **DATACON** maintains in any form, and shall retain no copies of such information. If the parties mutually agree that return or destruction of protected health information is not feasible, **DATACON** shall continue to maintain the security and privacy of such protected health information in a manner consistent with the obligations of this Agreement and as required by applicable law, and shall limit further use of the information to those purposes that make the return or destruction of the information infeasible. The duties hereunder to maintain the security and privacy of protected health information shall survive the discontinuance of this Agreement.
- 16.) **Health Care Provider** may amend this Agreement by providing ten (10) days prior written notice to **DATACON** in order to maintain compliance with **California** or Federal law. Such amendment shall be binding upon **DATACON** at the end of the ten (10) day period and shall not require the consent of **DATACON**. **DATACON** may elect to discontinue the Agreement within the ten (10) day period, but **DATACON's** duties hereunder to maintain the security and privacy of PROTECTED HEALTH INFORMATION shall survive such discontinuance. **Health Care Provider** and **DATACON** may otherwise amend this Agreement by mutual written agreement.
- 17.) **DATACON** shall, to the fullest extent permitted by law, protect, defend, indemnify and hold harmless **Health Care Provider** and his/her respective employees, directors, and agents ("Indemnities") from and against any and all losses, costs, claims, penalties, fines, demands, liabilities, legal actions, judgments, and expenses of every kind (including reasonable attorneys fees, including at trial and on appeal) asserted or imposed against any Indemnities arising out of the acts or omissions of **DATACON** or any subcontractor of or consultant of **DATACON** or any of **DATACON's** employees, directors, or agents related to the performance or nonperformance of this Agreement.

- 18.) **Disclaimer. DATACON MAKES NO WARRANTY OR REPRESENTATION THAT COMPLIANCE BY SUBMITTER WITH THIS AGREEMENT, HIPAA OR THE HIPAA REGULATIONS WILL BE ADEQUATE OR SATISFACTORY FOR SUBMITTER'S OWN PURPOSES OR THAT ANY INFORMATION IN SUBMITTER'S POSSESSION OR CONTROL OR TRANSMITTED OR RECEIVED BY SUBMITTER, IS OR WILL BE SECURE FROM UNAUTHORIZED USE OR DISCLOSURE, NOR SHALL DATACON BE LIABLE TO SUBMITTER FOR ANY CLAIM, LOSS OR DAMAGE RELATED TO THE UNAUTHORIZED USE OR DISCLOSURE OF ANY INFORMATION RECEIVED BY SUBMITTER FROM DATACON OR FROM ANY OTHER SOURCE. SUBMITTER IS SOLELY RESPONSIBLE FOR ALL DECISIONS MADE BY SUBMITTER REGARDING THE SAFEGUARDING OF PROTECTED HEALTH INFORMATION. SUBMITTER MAKES NO WARRANTY OR REPRESENTATION THAT COMPLIANCE BY DATACON WITH THIS AGREEMENT, HIPAA OR THE HIPAA REGULATIONS WILL BE ADEQUATE OR SATISFACTORY FOR DATACON'S OWN PURPOSES OR THAT ANY INFORMATION IN DATACON'S POSSESSION OR CONTROL, OR TRANSMITTED OR RECEIVED BY DATACON, IS OR WILL BE SECURE FROM UNAUTHORIZED USE OR DISCLOSURE OF ANY INFORMATION RECEIVED BY DATACON FROM SUBMITTER OR FROM ANY OTHER SOURCE. DATACON IS SOLELY RESPONSIBLE FOR ALL DECISIONS MADE BY DATACON REGARDING THE SAFEGUARDING OF PROTECTED HEALTH INFORMATION.**
- 19.) Entire Agreement. This Agreement sets forth the entire understanding of the parties with respect to its subject matter. Any previous agreements or understandings between the parties regarding the subject matter hereof are merged into and superseded by this Agreement.

Health Care Provider

 Date

Datacon Management, Inc.

3/11/2003
 Date

The official version of all federal regulations in the Code of Federal Regulations (CFR), including 45 CFR § 164.504, 164.524, and 164.526 referenced in this Agreement, may be found online at <http://www.hhs.gov/ocr/hipaa/finalreg.html>.

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