



BUSINESS ASSOCIATE AGREEMENT ("Agreement")

I. DEFINITIONS

Unless otherwise defined, terms used in this Agreement have the same meaning as those terms in the Privacy Rule.

- a. Commission Agreement. "Commission Agreement" shall mean Commission Agreement between Covered Entity and Business Associate and, if applicable, Claims Administration Agreement between Covered Entity and Business Associate.
- b. Business Associate. "Business Associate" shall mean _____ **(Broker)**.
- c. Covered Entity. "Covered Entity" shall mean BrokerNet USA, Inc.
- d. Data Aggregation. "Data Aggregation" shall have the same meaning as the term "data aggregation" in 45 CFR § 164.501: "with respect to protected health information created or received by a business associate in its capacity as the business associate of a covered entity, the combining of such protected health information by the business associate with the protected health information received by the business associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities."
- e. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- f. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- g. Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- H. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.
- I. Secretary. "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his designee.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

- d. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- e. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- f. Business Associate agrees to provide access to an individual's Protected Health Information maintained in a Designated Record Set, at the request of Covered Entity or Individual, in a time and manner that permits Covered Entity to meet the requirements under 45 CFR § 164.524, but no later than 30 days from date of request.
- g. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, at the request of an Individual or Covered Entity, but no later than 60 days from the date of the request for amendment.
- h. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity available to the Secretary, in a time and manner designated by the Secretary, but no later than 60 days from the date of request.
- i. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
- j. Business Associate agrees to provide to an Individual or to Covered Entity, in time and manner but no later than 60 days from the date of request, information documented in accordance with Section II.i above, to permit Covered Entity to comply with the accounting requirements of 45 CFR § 164.528.
- k. Business Associate agrees to distribute, at the direction of Covered Entity, Covered Entity's notice of privacy practices in accordance with 45 CFR § 164.520. The first distribution of such notice must be provided no later than April 14, 2003 to individuals then covered by the plan. Business Associate will also post notice on Business Associate's website as required by 45 CFR § 164.520.
- l. Business Associate agrees to maintain all the necessary EDI functionality in accordance with 45 CFR § 162.915.

III. OBLIGATIONS OF COVERED ENTITY

- a. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- b. Covered Entity and Business Associate must immediately notify the other party if either party receives any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Covered Entity's or Business Associate's use or disclosure of Protected Health Information.

- c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information 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 Protected Health Information. In accordance with the Privacy Rule, Covered Entity is not required to agree to any Individual's requests to restrict the use or disclosure of Protected Health Information and Business Associate must not agree to any such requests on Covered Entity's behalf. Business Associate agrees to comply, upon communication by Covered Entity, with any restrictions to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522.

IV. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- a. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- b. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information, if necessary, for the proper management and administration of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that the Protected Health Information will remain confidential and used or further disclosed only as Required by Law or for the purpose for which the Protected Health Information was disclosed to the person or entity, and the person or entity notifies the Business Associate of any instances of which the person or entity is aware in which the confidentiality of the Protected Health Information has been breached.
- c. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity, as permitted by 45 CFR §164.504(e)(2)(i)(B).
- d. Covered Entity has the right to amend this Agreement at any time with respect to permitted uses or disclosures by Business Associate.

V. TERM AND TERMINATION

- a. Term. The Term of this Agreement shall be effective as of April 14, 2003. Upon termination of this Agreement, Business Associate will destroy or return to Covered Entity any Protected Health Information it holds in any form. This provision also applies to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate will retain no copies of the Protected Health Information. If Business Associate reasonably can show that it is infeasible to return or destroy Protected Health Information, Business Associate must extend the protections under this Agreement to such Protected Health Information and only may further use or disclose such information for those purposes that make the return or destruction infeasible.
- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity is authorized to terminate this Agreement.
- c. Survival. The respective rights and obligations of Business Associate and Covered Entity under this Agreement will survive the termination of this Agreement.

VI. MISCELLANEOUS

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Health Insurance Portability and Accountability Act ("HIPAA") and/or the Privacy Rule.
- c. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

IN WITNESS WHEREOF, the undersigned duly authorized officers have caused this Agreement to be executed.

BrokerNet USA, Inc.

By: _____

Title: _____
Paul E. Morse

Dates: _____

Broker.

By: _____

Title: _____

Date: _____