

HIPAA Business Associate Agreement

Business Associate to Sub-Business Associate

This Business Associate Agreement (“BA Agreement”) is made between Advantage Technologies Consulting, Inc., a Michigan corporation (“Business Associate” or “Advantage”), and the undersigned entity that has a sub-contractor business relationship with Advantage (“Sub-Business Associate”), and forms part of the Agreement between Advantage and Sub-Business Associate.

WHEREAS, Pursuant to the federal Health Insurance Portability and Accountability Act, Public Law 104-191 (“HIPAA”), the U.S. Department of Health and Human Services issued final regulations entitled “Standards for Privacy of Individually Identifiable Health Information” (the “Privacy Rule”); Security Standards for the Protection of Electronic Protected Health Information (the “Security Rule”) and Breach Notification for Unsecured Protected Health Information (the “Breach Notification Rule”).

WHEREAS, the Privacy Rule requires certain entities to have their Business Associates with whom the entities may share Protected Health Information (as such term is defined in the Privacy Rule) to agree to certain provisions related to the use and disclosure of such Protected Health Information (the “Business Associate Contract Provisions”); and

WHEREAS, the Security Rule and the Breach Notification Rule impose additional obligations on Business Associates and their Sub-Business Associates; and

Now therefore, the parties hereby agree as follows:

1. **Definitions**. Capitalized terms used, but not otherwise defined, in this BA Agreement shall have the same meaning as those terms in the Privacy Rule, the Security Rule and the Breach Notification Rule.

2. **Obligations and Activities of Sub-Business Associate**.

2.1. Sub-Business Associate agrees to not use or further disclose Protected Health Information (“PHI”) other than as permitted or required by the BA Agreement or as required by law. Sub-Business Associate further agrees that, when using or disclosing PHI, it shall limit PHI, to the extent practicable, to a limited data set as defined in 45 CFR Part 164 or, if needed, to the minimum necessary to accomplish the intended purpose of such use or disclosure.

2.2. Sub-Business Associate agrees to use reasonably appropriate safeguards intended to prevent use or disclosure of the PHI other than as provided for by this BA Agreement, including implementing administrative, physical, and technical safeguards that are aimed at reasonably and appropriately protecting the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of Business Associate. Sub-Business Associate further agrees to comply with the requirements of 45 CFR 164.308, 164.310, 164.312, and 164.316 to the same extent such requirements apply to Business Associate.

2.3. Sub-Business Associate agrees to report to Business Associate any use or disclosure of the PHI that is not provided for by the Agreement or this BA Agreement of which it becomes aware. Effective as of the compliance date of the HIPAA Security Standards at 45 CFR Part 160, Part

162, and part 164, Sub-Business Associate agrees to report to Business Associate any Security Incident, as defined in 45 CFR 164.304, of which Sub-Business Associate becomes aware. Sub-Business Associate further agrees to notify Business Associate of any Breach of Unsecured PHI in accordance with 45 CFR 164.410. Such notification shall be made in as expeditious a manner as possible and in no event later than 30 calendar days after discovery, as defined in 45 CFR 164.410 (a)(2) and such notice shall comply with the requirements of the Breach Notification Rule.

2.4. Sub-Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI or which is received from, or created or received by Sub-Business Associate on behalf of Business Associate, complies with the provisions of this BA Agreement. Likewise, Business Associate agrees to the same restrictions and conditions protecting and/or governing the receipt or provision of PHI that apply through this BA Agreement to Sub-Business Associate with respect to such information.

2.5. Sub-Business Associate agrees to provide access, at the request of Business Associate, and within a reasonable time and manner, to PHI in a Designated Record Set to Business Associate in order to meet the requirements under 45 CFR 164.524.

2.6. Sub-Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Business Associate directs or agrees to pursuant to 45 CFR 164.526, at the request of Business Associate, and within a reasonable time and manner not materially disruptive of Sub-Business Associate's operations or business.

2.7. Sub-Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, solely relating to the use and disclosure of PHI received from, or created or received by Sub-Business Associate on behalf of the Business Associate available to the Secretary of Health and Human Services (the "Secretary"), in a time and manner designated by the Business Associate or the Secretary and not materially disruptive of Sub-Business Associate's operations or business, for the purposes of the Secretary determining Business Associate's compliance with the Privacy Rule. The Sub-Business Associate business unit providing the Services shall reasonably cooperate with Business Associate and Secretary in responding to the Secretary's requests. All information provided by Sub-Business Associate pursuant to this provision shall remain "Confidential Information" under the Agreement and subject to the restrictions on disclosure of such information as set forth therein.

2.8. Sub-Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Business Associate to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528 and the regulations adopted pursuant to 42 USC 17935(c), and to reasonably cooperate with Business Associate in responding to such requests.

2.9. Sub-Business Associate agrees to provide to Business Associate or, at Business Associate's direction, to an Individual, in the time and manner designated by Business Associate, information collected in accordance with Section 2.9 of this BA Agreement, to permit Business Associate to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528 and the regulations adopted pursuant to 42 USC 17935(c). All information provided by Sub-Business Associate pursuant to this provision shall remain "Confidential Information" under the Agreement and subject to the restrictions on disclosure of such information as set forth therein.

3. Permitted Uses and Disclosures by Sub-Business Associate.

Except as otherwise limited in this BA Agreement, Sub-Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of Business Associate as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Business Associate or the minimum necessary policies and procedures of the Business Associate of which Sub-Business Associate has been informed.

4. Specific Use and Disclosure Provisions.

4.1. Except as otherwise limited in this BA Agreement, Sub-Business Associate may use PHI for the proper management and administration of regular and ordinary business or to carry out the legal responsibilities of Sub-Business Associate under the Agreement or this BA Agreement.

4.2. Except as otherwise limited in this BA Agreement, Sub-Business Associate may disclose PHI for the proper management and administration of regular and ordinary business, provided that disclosures are required or compelled by law, or Sub-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 Sub-Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. Any and all such disclosures must be communicated and consented to by the Business Associate prior to disclosure.

4.3. Except as otherwise limited in this BA Agreement, Sub-Business Associate may use PHI to provide Data Aggregation services to Business Associate as permitted by 42 CFR 164.504(e)(2)(i)(B).

5. Obligations of Business Associate.

5.1 Business Associate shall provide Sub-Business Associate with any limitations in its notice of privacy practices of Business Associate in accordance with 45 CFR 164.520, to the extent that such limitation may affect Sub-Business Associate's use or disclosure of PHI.

5.2. Business Associate shall provide Sub-Business Associate with any changes in, or revocation of, any permission by an Individual to use or disclose PHI, to the extent that such changes may affect Sub-Business Associate's use or disclosure of PHI.

5.3. Business Associate shall notify Sub-Business Associate in writing of any restriction to the use or disclosure of PHI that Business Associate has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Sub-Business Associate's use or disclosure of PHI.

5.4. Business Associate shall not request Sub-Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Business Associate.

6. Term and Termination.

6.1. *Term.* The Term of this BA Agreement shall be effective as of the Effective Date contemplated by the parties' service contract to which this BA Agreement is an Exhibit, and shall terminate when all of the PHI provided by Business Associate to Sub-Business Associate, or created or received

by Sub-Business Associate on behalf of Business Associate, is destroyed or returned to Business Associate, 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, or on the date Business Associate terminates the Master Services Agreement, whichever is sooner.

6.2. *Termination For Cause.* In the event of a material breach of this BA Agreement, the other party shall either: (i) provide the breaching party with an opportunity to cure the breach or end the violation, and terminate the Agreement (including this BA Agreement) if the breaching party does not cure the breach or end the violation within sixty (60) days, or (ii) immediately terminate this BA Agreement if cure is not possible. If neither termination nor cure is feasible, the non-breaching party shall report the violation to the Secretary as required by the applicable U.S. Code of Regulations governing the disclosure and protection of PHI.

6.3. *Termination upon Issuance of Guidance or Change In Law.* If the Secretary provides additional guidance, clarification or interpretation on the Privacy Rule, or there is a change or supplement to the HIPAA statutes or regulations (both referred to as a "HIPAA Change"), such that a party hereto determines that the service relationship between Sub-Business Associate and Business Associate is no longer a Sub-Business Associate relationship as defined in HIPAA, such party shall provide written notice to the other party of the HIPAA Change, and upon mutual agreement of the parties that the HIPAA Change renders this BA Agreement unnecessary, this BA Agreement shall terminate and be null and void.

6.4. *Effect of Termination.*

A. Except as provided in paragraph (B) of this subsection, upon termination of this BA Agreement, for any reason, Sub-Business Associate shall return or destroy all PHI received from Business Associate, or created or received by Sub-Business Associate on behalf of Business Associate that Sub-Business Associate maintains. Except as provided in paragraph (B) below, Sub-Business Associate shall retain no copies of the PHI.

B. In the event that Sub-Business Associate determines that returning or destroying the PHI is infeasible, Sub-Business Associate shall retain only that protected health information which is necessary for Sub-Business Associate to continue its proper management and administration or to carry out its legal responsibilities; return to Business Associate the remaining protected health information that Sub-Business Associate still maintains in any form; continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as Sub-Business Associate retains the protected health information; not use or disclose the protected health information retained Sub-Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at under Section 3 which applied prior to termination; and, return to Business Associate the protected health information retained by Sub-Business Associate when it is no longer needed by Sub-Business Associate for its proper management and administration or to carry out its legal responsibilities.

7. **Miscellaneous.**

7.1. *Business Associate Rights and Remedies Upon Breach By Sub-Business Associate.* In the event Sub-Business Associate fails to perform its obligations hereunder or otherwise breaches this BA Agreement, Business Associate may exercise its rights and remedies.

7.2 *Indemnification.* Sub-Business Associate shall indemnify, hold harmless, and defend Business Associate from any and all claims, loss, liability, or costs resulting from or relating to any act, omission, or negligence of Sub-Business Associate in connection with any representation, duties or obligations of Sub-Business Associate under this BA Agreement. Business Associate shall indemnify, hold harmless, and defend Sub-Business Associate from any and all claims, loss, liability, or costs resulting from or relating to any act, omission, or negligence of Business Associate in connection with any representation, duties or obligations of Business Associate under this BA Agreement.

7.3 *Amendment.* The parties agree to take such action as is necessary to amend this BA Agreement and Master Services Agreement from time to time as is necessary for Business Associate to comply with the Privacy Rule and/or HIPAA. Sub-Business Associate shall notify Business Associate of any modifications to this BA Agreement which are required to comply with changes in the applicable Code of Federal Regulations pertaining to PHI. Such notice shall provide for access to such changes via electronic posting on Sub-Business Associate's website. To the extent that either Party requests further modifications to the Agreement, they shall negotiate in good faith for up to ninety (90) days to come to a mutual agreement on such changes.

7.4 *Survival.* The respective rights and obligations of Sub-Business Associate under Section 6.4 of this BA Agreement shall survive the termination of the Agreement.

7.5 *Interpretation.* Any ambiguity in this BA Agreement shall be resolved in favor of a meaning that permits Business Associate to comply with the Privacy Rule.

7.6 *Regulatory References.* A reference in this BA Agreement to a section in the Privacy Rule, Security Rule or Breach Notification Rule, as applicable means the section as in effect or as amended.

7.7 *Independent Contractor Status.* The parties hereby agree and acknowledge that Sub-Business Associate is acting as an independent contractor and not as an agent of Advantage.

7.8 *Agreement.* This agreement includes the content of this document and Schedule A. The parties agree to take such action as is necessary to amend this Agreement to comply with the requirements of the Privacy and Security Rules, the Health Insurance Portability and Accountability Act, ARRA the HITECH Act, the HIPAA rules and any other applicable laws.

IN WITNESS WHEREOF, Business Associate and Sub-Business Associate execute this Agreement.

BUSINESS ASSOCIATE:

SUB- BUSINESS ASSOCIATE:

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

SCHEDULE A

WARRANTIES AND REPRESENTATIONS BY SUB-BUSINESS ASSOCIATE.

Notwithstanding anything contained in the provisions of The Business Associate Agreement, the Sub-Business Associate hereby makes the following representations and warranties to Business Associate.

- (a) Sub-Business Associate is a fully HIPAA-compliant and has in place essential security measures as required by HIPAA and is fully compliant with the security rules described below. Security Rule (section 164) specifically requires, among other things, that the following listed safeguards be used to protect ePHI:
 - i. Data Backup Plan – 164.308(a)(7)
 - ii. Disaster Recovery Plan – 164.308(a)(7)
 - iii. Emergency Mode Operations Plan – 164.308(a)(7)
 - iv. Emergency Access Procedures – 164.312(a)(1)
 - v. Data Backup and Storage – 164.310(d)(1)
 - vi. Contingency Operations – 164.310(a)(1)
 - vii. Encryption & Decryption – 164.312(a)(1) and 164.312(e)(1)
- (b) Sub-Business Associate, until termination of its services rendered to Covered Entity, will not have any direct access to Protected Health Information in a humanly readable format.
- (c) Sub-Business Associate states that no party other than Covered Entity, including the Sub-Business Associate, without the explicit permission and consent of Covered Entity, has direct access to humanly readable protected health information stored in its server by the Covered Entity.
- (d) Sub-Business Associate represents that all data entered into, transferred by, stored by Covered Entity into the Online Storage provided by Sub-Business Associate will be encrypted with the highest level of encryption.
- (e) Sub-Business Associate states that it directly or through its associates, agents, vendors, subcontractors or any third parties, will not attempt to access, modify, retrieve or store any information unless otherwise requested by Covered Entity or without the expressed consent of Covered Entity.
- (f) Sub-Business Associate will not come in direct contact with any Protected Health Information in a humanly readable format and will merely act as a conduit for transportation of data in the manner required by Covered Entity or such as other party specified by Covered Entity and or stipulated by provisions of HIPAA and HITECH.
- (g) Sub-Business Associate will promptly notify the Covered Entity of any security breach as provided in the Business Associate Agreement.
- (i) Although Sub-Business Associate is responsible for encrypted PHI and non-PHI data stored into the Online Storage, unless agreed otherwise by both parties, Sub-Business Associate does not have any direct control over any PHI or non-PHI information accessed by Covered Entities and its patients, subjects, employees, agents, associates, representatives and/or other third parties and such access was authorized directly or indirectly by Covered Entity, with or without the knowledge of Business Associate.