

# HIPAA Business Associate Agreement

This Business Associate Agreement (“BA Agreement”) is made between Advantage Technologies Consulting, Inc., a Michigan corporation (“Advantage”), and the undersigned covered entity that has a business relationship with Advantage (“Client”), and forms part of the Agreement between Advantage and Client relating to the provision of Services to Client by Advantage.

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 covered entities and their Business Associates that may be addressed in the Master Services Agreement; 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, and if no such definition is provided in such rules, then the meaning shall be that given to such capitalized term in the Master Services Agreement to which this BA Agreement is incorporated by reference.

2. **Obligations and Activities of Advantage.**

2.1. Advantage agrees to not use or further disclose Protected Health Information (“PHI”) other than as permitted or required by this BA Agreement or as Required by Law. Advantage 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. Advantage 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 Client. Advantage 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 Client.

2.3. Advantage agrees to report to Client any use or disclosure of the PHI that is not provided for by the Master Services Agreement, this BA Agreement, or that of which it is implied by the type

of services it supplies Client. Effective as of the compliance date of the HIPAA Security Standards at 45 CFR Part 160, Part 162, and part 164, Advantage agrees to report to Client any Security Incident, as defined in 45 CFR 164.304, of which Advantage becomes aware. Advantage further agrees to notify Client 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 sixty (60) 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. Advantage agrees to ensure that any agent, including a subcontractor, to whom it provides PHI or which is received from, or created or received by Advantage on behalf of Client, complies with the provisions of this BA Agreement. Likewise, Client agrees to the same restrictions and conditions protecting and/or governing the receipt or provision of PHI that apply through this BA Agreement to Advantage with respect to such information.

2.5. Advantage agrees to provide access, at the request of Client, and within a reasonable time and manner not materially disruptive of Advantage's operations or business, to PHI in a Designated Record Set to Client in order to meet the requirements under 45 CFR 164.524.

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

2.7. Advantage 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 Advantage on behalf of the Client available to the Secretary of Health and Human Services (the "Secretary"), in a timely and manner designated to the Client or the Secretary and not materially disruptive of Advantage's operations or business, for the purposes of the Secretary determining Client's compliance with the Privacy Rule. The Advantage business unit providing the Services shall reasonably cooperate with Client and Secretary in responding to the Secretary's requests. All information provided by Advantage 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. Advantage agrees to document such disclosures of PHI and information related to such disclosures as would be required for Client 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 Client in responding to such requests.

2.9. Advantage agrees to provide to Client or, at Client's direction, to an Individual, in the time and manner designated by Client and not materially disruptive to Advantage's operations or business, information collected in accordance with Section 2.9 of this BA Agreement, to permit Client 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 Advantage 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.

2.10. If, in the performance of its obligations set forth in Sections 2.6 through 2.10, inclusive, Advantage expends time and materials in addition to the Services to be provided by Advantage

pursuant to the Agreement, Advantage shall provide Client with an estimate of the fees for such time and materials. Such fees to may be charged by Advantage for such time and materials, Advantage shall invoice Client on a time and materials basis at reasonable rate, and Client shall pay Advantage all such fees in accordance with the payment terms of the Agreement.

### **3. Permitted Uses and Disclosures by Advantage.**

Except as otherwise limited in this BA Agreement, Advantage may use or disclose PHI to perform functions, activities, or services for, or on behalf of Client as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Client or the minimum necessary policies and procedures of the Client of which Advantage has been informed. It shall be Client's responsibility to inform Advantage of Client's policies and procedures.

### **4. Specific Use and Disclosure Provisions.**

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

4.2. Except as otherwise limited in this BA Agreement, Advantage may disclose PHI for the proper management and administration of regular and ordinary business, provided that disclosures are required or compelled by law, or Advantage 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 Advantage of any instances of which it is aware in which the confidentiality of the information has been breached.

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

### **5. Obligations of Client.**

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

5.2. Client shall provide Advantage 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 Advantage's use or disclosure of PHI.

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

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

### **6. Term and Termination.**

6.1. *Term.* The Term of this BA Agreement shall be effective as of the Effective Date contemplated by the Master Services Agreement to which this BA Agreement is an Exhibit, and shall terminate when all of the PHI provided by Client to Advantage, or created or received by Advantage on

behalf of Client, is destroyed or returned to Client, 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 Client 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.

**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 Advantage and Client is no longer a 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, Advantage shall return or destroy all PHI received from Client, or created or received by Advantage on behalf of Client that Advantage maintains. Except as provided in paragraph (B) below, Advantage shall retain no copies of the PHI.

B. In the event that Advantage determines that returning or destroying the PHI is infeasible, Advantage shall retain only that protected health information which is necessary for Advantage to continue its proper management and administration or to carry out its legal responsibilities; return to Client the remaining protected health information that Advantage 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 Advantage retains the protected health information; not use or disclose the protected health information retained Advantage 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 Client the protected health information retained by Advantage when it is no longer needed by Advantage for its proper management and administration or to carry out its legal responsibilities.

**7. Miscellaneous.**

**7.1. Client Rights and Remedies Upon Breach By Advantage.** In the event Advantage fails to perform its obligations hereunder or otherwise breaches this BA Agreement, Client may exercise its rights and remedies available to it under the Master Services Agreement, subject to the applicable limitations of liability.

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

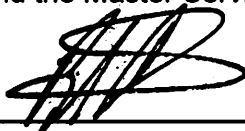
**7.3. Amendment.** The parties agree to take such action as is necessary to amend this BA Agreement and Master Services Agreement from time to time as is necessary for Client to comply with the Privacy Rule and/or HIPAA. Advantage shall notify Client of any modifications to this BA Agreement which are 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 Advantage'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 Advantage 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 Client 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.

In the event of any conflict between the terms and conditions of this BA Agreement and the terms and conditions of the other provisions of the Master Services Agreement pertaining solely to PHI, this BA Agreement shall prevail. With respect to all non-PHI matters, as between this BA Agreement and the Master Services Agreement, Master Services Agreement shall prevail.



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Advantage Technologies Consulting, Inc.

Authorized Signatory: Bryan Currier, President