

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BAA") is made and entered into by and between ("Covered Entity") and AuthNet, LLC (the "Company"). The Covered Entity and the Company shall each be referred to herein as individually as "party" and collectively as "parties").

R E C I T A L S

WHEREAS, it is the intent of the parties hereto to comply in all respects with the Health Insurance Portability and Accountability Act of 1996, its privacy, security, transaction and code sets, identifier, and other standards, any and all regulations promulgated thereunder (whether final or proposed), and any and all other laws, rules, case law decisions, regulations, interpretations, and guidelines issued or arising under or interpreting the Health Insurance Portability and Accountability Act of 1996 (all of the foregoing are referred to herein as "HIPAA");

WHEREAS, it is the intent of the parties hereto to comply in all respects with Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, 42 U.S.C. §§17921-17954, its privacy, security and other standards and any and all regulations promulgated thereunder (whether final or proposed), and any and all other laws, rules, case law decisions, regulations, interpretations, and guidelines issued or arising under or interpreting Subtitle D of the Health Information Technology for Economic and Clinical Health of 2009 (all of the foregoing are referred to herein as "HITECH");

WHEREAS, the parties desire to enter into this BAA for the purpose of supplementing either a new or existing Agreement and/or arrangement between the parties pursuant to which Information (as defined herein below) is exchanged between the parties. As used herein, the term "Agreement" shall also be deemed to refer to any current agreement or other arrangement and all future agreements or arrangements, whether written or oral, between the parties that relate to or that involve the exchange of Information or that involve disclosure of the Information in any form or medium;

WHEREAS, any provision of the Agreement that is contradictory to one or more terms of this BAA shall be superseded by the terms of this BAA to the extent of the contradiction and for the purpose of both parties' compliance with HIPAA and HITECH. The terms of this BAA, to the extent they are unclear, shall be construed to allow for full compliance by parties with HIPAA and HITECH.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and obligations of the parties hereto, it is agreed as follows:

1. Definitions. Unless otherwise specified in this BAA, all capitalized terms used in this BAA shall have the meanings established for purposes of HIPAA or HITECH, as applicable. Specific statutory or regulatory citations used in this BAA shall mean such citations as amended and in effect from time to time.

- o a) **"Business Associate"** shall mean the Company as well as the Company's parent entities, affiliates, and subsidiaries, as well as all employees, agents, volunteers, contractors, subcontractors, directors, officers, and any other person or organization under the control or



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direction of the Company, its parent entities, affiliates, or subsidiaries, or persons providing services pursuant to the Agreement at the direction of Company.

- o b) **"Information"** as such term is used in this BAA shall mean: (i) "Protected Health Information" and "Individually Identifiable Health Information" as those terms are defined in HIPAA; and (ii) any information, whether oral or recorded in any form or medium, that relates to any present, past, or future patient of the Covered Entity or any of the Covered Entity's affiliates or subsidiaries; and (iii) all data and information of any kind, whether oral or recorded in any form or medium, that originates with the Covered Entity or any of its affiliates or subsidiaries; and (iv) all data and information, whether oral or recorded in any form or medium, that relates to Covered Entity or that constitutes proprietary information of the Covered Entity, including, without limitation, patient information, financial and administrative information, payor information, medical staff information, methods, systems, or practices of either party, and computer program information.
- o c) **"Unauthorized Use or Disclosure"** shall mean any use or disclosure of Information that is not specifically permitted under this BAA or under the Agreement.
- o d) **"Breach"** shall mean the unauthorized acquisition, access, use, or disclosure of unsecured protected health information ("PHI") which compromises the security of the PHI, meaning that there is a significant risk of financial, reputational, or other harm to the individual whose PHI has been compromised.
- o e) **"Unsecured PHI"** shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by HHS guidance.
- o f) **"Electronic PHI" or "ePHI"** shall mean PHI that is transmitted or maintained in electronic media as defined in the HIPAA Security Regulations. Electronic PHI is a subcategory of PHI and any reference to PHI in this BAA will include ePHI.

2. Obligations of Business Associate. To the extent required by HIPAA and HITECH the Company shall have the following obligations with regard to Information:

a) **Security Safeguards.** Company acknowledges and agrees that for so long as it has or may have access to the Information that the Company shall implement and maintain administrative, physical, and technical safeguards that are necessary, reasonable, and desirable to appropriately protect the integrity, confidentiality, and availability of the Information or electronic PHI that it creates, receives, maintains, or transmits (including but not limited electronic mail and faxes) on behalf of the Covered Entity. The Company shall take such further actions as are necessary to protect all Information transmitted or provided by the Covered Entity or to which the Company has access. The Company agrees that at all times during which Company has or may have access to the Information, Company shall have security mechanisms in place to: (i) ensure the authentication of all transmissions; (ii) protect the integrity and confidentiality of the Information; (iii) protect all of the Information from improper access or Unauthorized Use or Disclosure; and (iv) maintain equipment, supplies, and other materials to protect against viruses, disabling codes, and any other matters, items, or causes that have the potential to impact negatively or adversely any of the Information or the Company and the Covered Entity's ability to transmit the Information. Furthermore, Company agrees that the Company shall maintain the Security of Information in accordance with all applicable state/federal laws, rules and regulations, including the requirements of HIPAA and HITECH.



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b) Confidentiality. Except as otherwise required by law or legal process and except as expressly permitted under this BAA, Company shall not: (i) disclose the Information of the Covered Entity to any third person or entity at any time; (ii) improperly use any of the Covered Entity's Information for Company's own benefit or for the benefit of any third person or entity; (iii) allow any Unauthorized Use or Disclosure; (iv) use or disclose any Information in any manner that would constitute a violation of HIPAA and/or HITECH. Company agrees that the Company shall employ and maintain appropriate safeguards to prevent any Unauthorized Use or Disclosure or other disclosure of Information not expressly permitted herein, which safeguards shall include, without limitation, informing the Company's employees, agents, contractors, subcontractors, volunteers, and workforce of the confidentiality provisions of this BAA and providing appropriate privacy and security training to the Company's employees. Company shall have access to and shall use the Information of the Covered Entity if and only to the extent that the Company has a legitimate and reasonable need to access and use the Information. Company shall access and use the Information of the Covered Entity only to the extent absolutely necessary to carry out its functions under the Agreement or as required by law, and Company shall limit Company's use and disclosure of Information to the minimum necessary to accomplish the intended purpose of the Agreement. Company agrees that it shall maintain the Confidentiality of Covered Entity's Information in accordance with all applicable state/federal laws, rules and regulations, including the requirements of HIPAA and HITECH.

c) Reporting and Mitigation Obligations. Company shall report to the Covered Entity any Unauthorized Use or Disclosure or security incident involving Information of the Covered Entity within five (5) days after Company learns of such Unauthorized Use or Disclosure. Such report shall set forth with specificity all facts and circumstances surrounding the Unauthorized Use or Disclosure. If any such Unauthorized Use or Disclosure occurs, the Company shall take such actions as are desirable or necessary or that are requested by Covered Entity to mitigate and cure any issue or problem resulting in or contributing to the Unauthorized Use or Disclosure. In the event of discovery of a breach of unsecured Information of the Covered Entity, the Company shall immediately notify the Covered Entity, and shall provide the Covered Entity with a written notification of breach that includes the identification of each individual whose unsecured Information has been, or is reasonably believed to have been, accessed, acquired, used, or disclosed. This information shall be provided without unreasonable delay, but no event later than 60 days after discovery of the breach.

3. Contractors. In the event that that the Company discloses any Information of the Covered Entity to any contractors, subcontractors, or suppliers (the "Contractors"), the Company shall ensure that any and all such Contractors execute a written agreement that binds such Contractors to the same restrictions and conditions that apply to the Company with respect to the Information as set forth in this BAA.

4. Access of Individuals to Protected Health Information. Company agrees to allow individuals to access, inspect, and obtain copies of such individual's Information as required under HIPAA. The Company shall not deny access to any individual otherwise entitled to access to his or her Information for any reason not specifically permitted by HIPAA. In the event that the Company receives a request by an individual to access his or her Information, the Company promptly shall notify the Covered Entity of such request, the specific Information requested, and purpose of such request.

5. Access of Covered Entity to Information. To the extent necessary or required the Company shall allow the Covered Entity access, at reasonable times and during reasonable hours, to such Information, equipment,

documents and other information, and premises as shall reasonably be required to ensure that that the Company has complied and is in compliance with its obligations under this BAA.

Notwithstanding the foregoing, Covered Entity shall not have an obligation to monitor the Company's compliance with the provisions hereof, it being expressly acknowledged and agreed that the Company assumes the full responsibility and obligation to notify the Covered Entity of any breach of the provisions hereof, including any Unauthorized Use or Disclosure of which the Company may become aware. Additionally, the Company shall maintain a record of all disclosures of Information made otherwise than for purposes of the Agreement, including the date of disclosure, the name and address of the recipient, and brief description of the Information disclosed, and the purpose of the disclosure, which record shall be available to the Covered Entity upon request.

6. Amendment or Correction of Information. The Company agrees to amend and correct any Information in its possession pursuant to the Agreement when reasonably requested by the Covered Entity and within the time requested by the Covered Entity or, if no time frame is specified within ten (10) days after notice of such request by the Covered Entity.

7. Inspection of Records. Company agrees to make its internal practices, books, documents, and records regarding the use and disclosure of Protected Health Information received from the Covered Entity available to the Secretary of the Department of Health and Human Services for the purpose of determining the Company's compliance with HIPAA and HITECH. If requested to disclose any such books, documents, records, or practices, pursuant to this section the Company promptly shall notify the Covered Entity of such request, the specific information requested, and the purpose of such request.

8. Return/Destruction of Information. Upon the expiration or termination of the Agreement (regardless of the reason therefor), Company shall return or destroy all Information received from the Covered Entity pursuant to the Agreement in its possession in any form or medium, and shall retain no copies of any part of the Information; or, if the Covered Entity agree that return or destruction is not feasible or that the Company has a legitimate business reason (to the extent permissible under HIPAA and HITECH) to maintain copies of certain documents for its records, the Company shall continue to extend the protections of this BAA to such Information, and shall limit further use of the Information to those purposes that make the return or destruction of the Information infeasible.

9. Change of Law. Upon the enactment of any law, rule, or regulation affecting the use or disclosure of Information, or the rendering of any decision by a state or federal court relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law, rule, or regulation, this BAA shall be deemed automatically amended so as may be necessary to comply with such law or regulation. Subsequently the Covered Entity may by written notice to the Company, propose an amendment to this BAA or the Agreement in such manner as the Covered Entity reasonably determines such change is necessary to document compliance with such law or regulation. The Company agrees to adopt such an amendment proposed by the Covered Entity within 30 days of notice of the Covered Entity to the Company that a written amendment is necessary. If the Company refuses to adopt the Covered Entity's proposed amendment within thirty (30) days thereafter, the Covered Entity who proposed the amendment may terminate the Agreement upon notice to the Company.

10. Termination. Notwithstanding anything contained in the Agreement to the contrary, either party may terminate the Agreement in the event that the other party commits a material breach of any term or provision of this BAA



effective within thirty (30) days after the party's written notice thereof to the other party.

11. No Third Party Beneficiaries. There shall be no incidental or intended third party beneficiaries of this BAA or the Agreement.

12. Construction and Interpretation. The terms and provisions of this BAA shall prevail in the event of a conflict between the terms hereof and any term or provision of the Agreement.

13. Survival of Agreement. This BAA shall survive the termination of Agreement so long as the Company is in possession Information collected from, by or on behalf of the Covered Entity or there still exists any other arrangement or agreement(s) between the parties.

IN WITNESS WHEREOF, the parties have made and entered into this BAA as of the day and date first set forth above.

Covered Entity Company

BY: _____

BY: AuthNet, LLC

Signature

Signature

Print Name

Print Name

Date

Date