

HIPAA Business Associate Agreement

This Business Associate Agreement (“BAA”) is entered into this ____ day of _____, 2005 (the "Effective Date") by and between _____ with its principal office at _____ (“COVERED ENTITY”) and Data Archive Corp. with its principal office at 72 Mirona Road, Portsmouth, NH (“DATA ARCHIVE”).

WHEREAS, COVERED ENTITY is in the business of providing health care services and is subject to the Health Insurance Portability and Accountability Act Privacy Regulations at 45 CFR § 164.500 *et seq.*;

WHEREAS, DATA ARCHIVE is in the business of providing off-site backup services, training and support.

WHEREAS, DATA ARCHIVE intends to provide software and services to COVERED ENTITY for the purpose of securing data off-site and the configuration and maintenance of computer systems;

WHEREAS, DATA ARCHIVE may, in the course of providing such software and related services, have access to Protected Health Information (as defined herein); and

WHEREAS, DATA ARCHIVE and COVERED ENTITY are entering into this BAA to set forth DATA ARCHIVE’s obligations with respect to its handling of such Protected Health Information.

NOW THEREFORE, for mutual consideration the sufficiency of which is acknowledged by both parties, the parties agree as follows

1. **Definitions.** For purposes of this Section, the following terms shall have the indicated meanings:
 - 1.1 “Affiliated Entity” shall mean an entity under common control or common ownership with COVERED ENTITY which has been designated as an Affiliated Entity pursuant to the HIPAA Regulations.
 - 1.2 “Protected Health Information” or “PHI” shall have the same meaning as the term "protected health information" in 45 C.F.R. § 164.501, limited to the information created or received by DATA ARCHIVE from or on behalf of COVERED ENTITY.
 - 1.3 “HIPAA Regulations” shall mean the regulations promulgated by the Secretary of Health and Human Services under the authority of Title II, Subtitle F of the Health Insurance Portability and Accountability Act (Public Law 104-191) and codified at 45 C.F.R. § 164.500 *et seq.*

2. **Obligations of DATA ARCHIVE.**

DATA ARCHIVE agrees that it will:

- 2.1 not use or further disclose PHI other than as specifically set forth in this BAA;

- 2.2 not use or further disclose PHI in a manner that would violate the requirements of state or federal law including the provisions of the HIPAA Regulations;
- 2.3 use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this BAA;
- 2.4 report to COVERED ENTITY any use or disclosure of PHI not provided for by this Agreement of which DATA ARCHIVE becomes aware;
- 2.5 ensure that any of its agents, including subcontractors, to whom DATA ARCHIVE provides PHI agree to the same restrictions and conditions that apply to DATA ARCHIVE with respect to such PHI;
- 2.6 make available PHI in accordance with the HIPAA Regulations;
- 2.7 make available PHI for amendment and incorporate any amendments to PHI in accordance with the HIPAA Regulations;
- 2.8 make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of Health and Human Services for purposes of determining COVERED ENTITY'S compliance with the HIPAA Regulations;
- 2.9 return or destroy all PHI received from COVERED ENTITY which DATA ARCHIVE maintains in any form at the termination of this BAA; and
- 2.10 incorporate any amendments or corrections to PHI which may be requested pursuant to the HIPAA Regulations.

3. Permitted Uses and Disclosures by DATA ARCHIVE.

- 3.1 Except as otherwise limited in this Agreement, DATA ARCHIVE may use or disclose PHI on behalf of, or to provide services to, COVERED ENTITY for software and data archiving services, if such use or disclosure of PHI would not violate the Privacy Rule if done by COVERED ENTITY or the minimum necessary policies and procedures of the COVERED ENTITY.
- 3.2 Except as otherwise limited in this BAA, DATA ARCHIVE may use PHI for the proper management and administration of DATA ARCHIVE or to carry out DATA ARCHIVE'S legal responsibilities.
- 3.3 Except as otherwise limited in this BAA, DATA ARCHIVE may disclose PHI for the proper management and administration of DATA ARCHIVE, provided that disclosures are required by law, or DATA ARCHIVE 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 DATA ARCHIVE of any instances of which it is aware in which the confidentiality of the information has been breached.
- 3.4 Except as otherwise limited in this BAA, DATA ARCHIVE may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B).
- 3.5 DATA ARCHIVE may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. §164.502(j)(1).

4. Obligations of COVERED ENTITY.

- 4.1 COVERED ENTITY shall notify DATA ARCHIVES 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 DATA ARCHIVE' use or disclosure of PHI.
- 4.2 COVERED ENTITY shall notify DATA ARCHIVE of any changes in, or revocation of, permission by any individual to use or disclose PHI, to the extent that such changes may affect DATA ARCHIVE'S use or disclosure of PHI.
- 4.3 COVERED ENTITY shall notify DATA ARCHIVE of any restriction to the use or disclosure of PHI that COVERED ENTITY has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect DATA ARCHIVE'S use or disclosure of PHI.
- 4.4 COVERED ENTITY shall not request DATA ARCHIVE to use or disclose PHI in any manner that would not be permissible under 45 C.F.R. § 164.500 et seq. if done by COVERED ENTITY.

5. Audit Rights. In order to allow COVERED ENTITY to certify its compliance with the HIPAA Regulations, DATA ARCHIVE shall permit COVERED ENTITY, at COVERED ENTITY'S sole expense and on five (5) days prior written notice, to audit DATA ARCHIVE's internal practices, books and records relating to its use and disclosure of PHI to verify DATA ARCHIVE's compliance with this BAA; provided that COVERED ENTITY or its agents conducting such audit shall agree to maintain the confidentiality of DATA ARCHIVE's commercial, confidential, and proprietary information, and shall not interfere unreasonably with DATA ARCHIVE's business activities. COVERED ENTITY hereby agrees that such an audit will be conducted no more than once per calendar year, unless COVERED ENTITY has received a written request from the Secretary of Health Human Services for a more frequent audit, or unless a previous audit has disclosed a material breach of this BAA. COVERED ENTITY and its agents shall use information received during an audit solely for the purposes of this BAA and will otherwise maintain the confidentiality of any information provided by DATA ARCHIVE.

6. Term and Termination.

- 6.1 Term. This BAA shall be effective as of the Effective Date and shall terminate when all of the PHI provided by COVERED ENTITY to DATA ARCHIVE, or created or received by DATA ARCHIVE on behalf of COVERED ENTITY, is destroyed or returned to COVERED ENTITY, 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.
- 6.2 Termination for Cause. Upon COVERED ENTITY'S knowledge of a material breach of this BAA by DATA ARCHIVE, COVERED ENTITY shall either:
 - 6.2.1 Provide an opportunity for DATA ARCHIVE to cure the breach or end the violation and terminate this BAA if DATA ARCHIVE does not cure the breach or end the violation within the time specified by COVERED ENTITY; or

6.2.2 Immediately terminate this BAA if DATA ARCHIVE has breached a material term of this BAA and cure is not possible.

6.3 Effect of Termination.

6.3.1 Upon termination of this BAA, DATA ARCHIVE shall return or destroy all PHI received from COVERED ENTITY, or created or received by DATA ARCHIVE on behalf of COVERED ENTITY.

6.3.2 In the event that DATA ARCHIVE determines that returning or destroying the PHI is infeasible, DATA ARCHIVE shall provide to COVERED ENTITY written notification of the conditions that make return or destruction infeasible. Upon receipt of such notification, DATA ARCHIVE shall extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as DATA ARCHIVE maintains such PHI.

7. Miscellaneous.

7.1 Third Party Rights. The terms of this BAA are not intended nor should they be construed to grant any rights to parties other than DATA ARCHIVE and COVERED ENTITY.

7.2 Applicable Law and Forum. This BAA shall be interpreted and construed in accordance with the laws of the State of New Hampshire. Any action arising under or relating to this BAA shall be brought in the federal or state courts located in New Hampshire. Each party hereto consents to the exclusive jurisdiction of the foregoing courts.

7.3 Waiver. No delay or omission on the part of either party in exercising any right hereunder shall operate as a waiver of such right or of any other right under this BAA. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any further occasion. The election of either party of a particular remedy on default will not be exclusive of any other remedy, and all rights and remedies of the parties hereto will be cumulative.

7.4 Amendments. Any amendment to this BAA shall not be binding on either of the parties to this BAA unless such amendment is in writing and executed by the party against whom enforcement is sought.

7.5 Notices. Any notices required or permitted under this BAA shall be in writing and delivered in person or sent by registered or certified mail, return receipt requested, proper postage prepaid, properly addressed to the address of the addressee set forth above or to such other more recent address of the addressee of which the sending party has received written notice.

- 7.6 Severability. If one or more provisions of this BAA shall be held unenforceable, invalid, or illegal in any respect, such unenforceability, invalidity, or illegality shall not affect any other provision of this BAA, which shall be construed as if such unenforceable, invalid, or illegal provisions had never been a part of the BAA.
- 7.7 Authority. Each party has full power and authority to enter into and perform this BAA, and the person signing this BAA on behalf of each party has been properly authorized and empowered to enter into this BAA.
- 7.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original and all of which, when taken together, shall constitute one and the same instrument, and facsimile signatures shall be given the same effect as original signatures.

IN WITNESS WHEREOF, the parties hereto have signed this BAA.

DATA ARCHIVE CORP.

COVERED ENTITY

By: _____
Vincent Lombardi
President

By: _____
Print Name: _____
Print Title: _____