

BUSINESS ASSOCIATE AGREEMENT

Effective Date: _____

"Customer" :

Name: _____

Address: _____

City, State, Zip: _____

Fax: _____

Attention: _____

"Business Associate":

Name: Insurance Benefit Spot Check, Inc. a California corporation

Address: 1010 Hurley Way, Suite 180

Sacramento, CA 95825

Fax: (916) 648-1153

Attention: Joseph Barkett

RECITALS

WHEREAS, Business Associate now and in the future may have relationships with Customer in which Business Associate is entrusted with confidential patient information for use in providing services or products to Customer.

WHEREAS, Business Associate and Customer (each a "Party" and collectively the "Parties") desire to meet their obligations under the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Regulation") published by the U.S. Department of Health and Human Services ("HHS") at 45 C.F.R. parts 160 and 164 under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and as may be applicable to the services rendered by Business Associate to the Customer, under the Gramm-Leach-Bliley Act ("GLB") and implementing regulations.

WHEREAS, both Parties desire to set forth the terms and conditions pursuant to which Protected Health Information that is provided by, or created or received by, the Business Associate on behalf of the Customer ("Protected Health Information"), will be handled between themselves and third parties.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS AND CONDITIONS

PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION

1.1 Services. Business Associate provides services (which may include transaction services as well as servicing hardware or software products) ("Services") that involve the use and/or disclosure of Protected Health Information. These Services are provided to Customer under various agreements ("Service Agreements") that specify the Services to be provided by Business Associate. Except as otherwise specified herein, the Business Associate may make any and all uses of Protected Health Information created or received from or on behalf of Customer's patients necessary to perform its obligations under the Service Agreements; provided, however, that all other uses not authorized by this Agreement, the applicable Service Agreement, the terms and conditions of Business Associate's agreements with Customer's patients or other written instructions from the Customer's patients, are prohibited. Moreover, Business Associate may disclose Protected Health Information for the purposes authorized by this Agreement only (i) to its employees, subcontractors and agents in accordance with Section 2.1(e) below, (ii) as directed by the Customer, (iii) as directed by the Customer's patients, or (iv) as otherwise permitted by the terms of this Agreement including, but not limited to, Section 1.2(a) and Section 1.3(b) below.

1.2. Data Analysis. Business Associate may: (a) with prior written notice to Customer, use, analyze, and disclose the Protected Health Information in its

possession for the public health activities and purposes set forth at 45 C.F.R. § 164.512(b); and

(b) aggregate the Protected Health Information in its possession with the Protected Health Information of other customers and covered entities that the Business Associate has in its possession through its capacity as a business associate to such other entities, provided that the purpose of such aggregation is to provide Customer with data analyses relating to the Health Care Operations of the Customer. Periodically, Business Associate will notify Customer of opportunities for such analyses and, provided that Customer does not decline to participate, Business Associate will promptly furnish the results of such analysis to Customer. Customer also may propose analyses that would be useful for its purposes and, to the extent reasonable, and permissible by law and its agreements with other covered entities, Business Associate will attempt to prepare such analyses.

1.3. Business Activities of the Business Associate. Unless otherwise limited herein, the Business Associate may: (a) use the Protected Health Information in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate;

(b) disclose the Protected Health Information in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of the Business Associate, provided that (i) the disclosures are "required by law," as defined in 45 C.F.R. § 164.501 or (ii) the Business Associate has received from the third party written assurances regarding its confidential handling of such Protected Health Information as required under 45 C.F.R. § 164.504(e)(4); and

(c) de-identify any and all Protected Health Information provided that Business Associate implements de-identification criteria in accord with 45 C.F.R. § 164.514(b) and further provided that Business Associate provides to Customer the documentation required by 45 C.F.R. § 164.514(b), which may be in the form of a written assurance from the Business Associate. De-identified information does not constitute Protected Health Information and is not subject to the terms of this Agreement; such de-identified information may include information about the Customer.

2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PROTECTED HEALTH INFORMATION

2.1. Responsibilities of the Business Associate. With regard to its use and/or disclosure of Protected Health Information, the Business Associate agrees to: (a) use and/or disclose the Protected Health Information only as permitted or required by this Agreement or as otherwise required by law;

(b) report to the designated Privacy Officer of the Customer, in writing, any use and/or disclosure of the Protected Health Information that is not permitted or required by this Agreement of which Business Associate becomes aware within two days of Business Associate's discovery of such unauthorized use and/or disclosure;

(c) establish procedures for mitigating, to the greatest extent possible, any deleterious effects from any improper use and/or disclosure of Protected Health Information that the Business Associate reports to the Customer;

(d) use commercially reasonable efforts to maintain the security of the Protected Health Information and to prevent the unauthorized use and/or disclosure of such Protected Health Information, which shall in no event be less than the efforts Business Associate applies in protecting its own confidential business information;

(e) require all of its subcontractors and agents that receive, use or have access to Protected Health Information under this Agreement, to agree to adhere to the same restrictions and conditions on the use and/or disclosure of Protected Health Information that apply to the Business Associate pursuant to this Agreement and to provide adequate safeguards against improper use or disclosure;

(f) make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to the Secretary of HHS for purposes of determining the Customer's compliance with the Privacy Regulation;

(g) upon written request, make available within thirty days information necessary for Customer to make an accounting of disclosures of an individual's Protected Health Information; and

(h) subject to Section 4.5 below, return to the Customer or destroy, within ninety days of the termination of this Agreement, the Protected Health Information in its possession and retain no copies (which for purposes of this Agreement shall mean segregable databases, files, or recording media identifiable to Customer that are used by Business Associate in providing Services on behalf of Customer).

2.2. **Responsibilities of the Customer.** With regard to the use and/or disclosure of Protected Health Information by the Business Associate, the Customer agrees: (a) to obtain any consent or authorization that may be required by 45 C.F.R. § 164.506, § 164.508, or applicable state law prior to furnishing Business Associate the protected health information pertaining to an individual; and

(b) that it will not furnish Business Associate protected health information that is subject to any arrangements permitted or required of the Covered Entity under 45 C.F.R. part 160 and 164 that may impact in any manner the use and/or disclosure of Protected Health Information by the Business Associate under this Agreement and the Services Agreement(s), including, but not limited to, restrictions on use and/or disclosure of Protected Health Information as provided for in 45 C.F.R. § 164.522 and agreed to by the Covered Entity.

2.3 **Responsibilities of the Parties with Respect to Designated Record Sets.** This Section 2.3 applies only if, in the course of performing the Services, Business Associate and Customer agree that Business Associate maintains Designated Records Sets containing Protected Health Information.

(a) Business Associate agrees to: (1) at the request of, and in the time and manner designated by the Customer, provide access to the Protected Health Information to the Customer, or the individual to whom such Protected Health Information relates, or his or her authorized representative, in order to satisfy a request by such individual under HIPAA; and (2) at the request of, and in the time and manner designated by the Customer, make any amendment(s) to the Protected Health Information that the Customer directs.

(b) Customer agrees to: (1) notify Business Associate, in writing, of any Protected Health Information that Customer seeks to make available to an individual pursuant to HIPAA and agree with Business Associate as to the time, manner, and form in which Business Associate shall provide such access; and (2) notify Business Associate, in writing, of any amendment(s) to the Protected Health Information in the possession of Business Associate that Customer believes are necessary because of its belief that the

Protected Health Information that is the subject of the amendment(s) has been or could be relied upon by Business Associate or others to the detriment of the individual who is the subject of the Protected Health Information.

3. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

3.1. **General Representations.** Each Party represents and warrants to the other Party: (a) that all of its employees, agents, representatives and members of its workforce, whose services may be used to fulfill obligations under this Agreement are or shall be appropriately informed of the applicable terms of this Agreement and are under legal obligation to each Party, respectively, by contract or otherwise, sufficient to enable each Party to fully comply with all applicable provisions of this Agreement; (b) that it will reasonably cooperate with the other Party in the performance of the mutual obligations under this Agreement; and (c) that it is prepared to comply with those provisions of this Agreement required by 45 C.F.R. part 164 on or before April 14, 2003.

4. TERM AND TERMINATION

4.1. **Term.** This Agreement shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Section 4. In addition, certain provisions and requirements of this Agreement shall survive the expiration or termination of this Agreement in accordance with Section 5.2 herein.

4.2. **Termination by the Customer.** As provided for under 45 C.F.R. § 164.504(e)(2)(iii), the Covered Entity may immediately terminate this Agreement and any related Services Agreements if the Covered Entity makes the determination that the Business Associate has breached a material term of this Agreement. Alternatively, the Covered Entity may choose to: (i) provide the Business Associate with seven days written notice of the existence of an alleged material breach; and (ii) afford the Business Associate an opportunity to cure said alleged material breach upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved within thirty days, Business Associate must cure said breach to the satisfaction of the Covered Entity within ninety days. Failure to cure in the manner set forth in this Section 4.2 shall be grounds for the immediate termination of this Agreement.

4.3. **Termination by Business Associate.** Business Associate may immediately terminate this Agreement and any related Services Agreements if Business Associate makes the determination that Covered Entity has breached a material term of this Agreement. Alternatively, Business Associate may choose to: (i) provide Covered Entity with seven days written notice of the existence of an alleged material breach; and (ii) afford Covered Entity an opportunity to cure said alleged material breach upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved within ninety days, Covered Entity must cure said breach to the satisfaction of Business Associate within ninety days. Failure to cure in the manner set forth in this Section 4.3 shall be grounds for the immediate termination of this Agreement.

4.4. **Automatic Termination.** This Agreement will automatically terminate without any further action of the parties upon the termination or expiration of all Services Agreement(s) between Customer and Business Associate.

4.5. **Effect of Termination.** Upon the termination of this Agreement pursuant to this Section 4, Business Associate agrees to return or destroy within ninety days all Protected Health Information identifiable to Customer, including such information in possession of Business Associate's subcontractors, if it is feasible to do so. If return or destruction of said Protected Health Information is not feasible, the Business Associate will notify the Customer in writing. Said notification shall include: (i) a statement that the Business Associate has determined that it is infeasible to return or destroy the Protected Health Information in its possession, and (ii) the specific reasons for such determination. Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to the Business Associate's use and/or disclosure of any Protected Health Information retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the Protected Health Information infeasible.

5. MISCELLANEOUS

5.1. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the parties' compliance with federal and/or state health information confidentiality laws and regulations, as well as the parties' obligations under the business associate provisions of 45 C.F.R. parts 160 and 164. This Agreement supersedes all prior or contemporaneous written or oral memoranda, arrangements, contracts or understandings between the parties hereto relating to the parties' compliance with federal and/or state health information confidentiality laws and regulations and the parties' health information confidentiality and security obligations under 45 C.F.R. parts 160 through 164.

5.2. Change of Law. Customer shall notify Business Associate within 90 days of any amendment to any provision of HIPAA, or its implementing regulations set forth at 45 C.F.R. parts 160 through 164, which materially alters either Party's or both Parties' obligations under this Agreement. The Parties agree to negotiate in good faith mutually acceptable and appropriate amendment(s) to this Agreement to give effect to such revised obligations; provided, however, that if the parties are unable to agree on mutually acceptable amendment(s) within 90 days of the relevant change of law, either party may terminate this Agreement consistent with sections 4.5 and 5.4.

5.3. Construction of Terms. The terms of this Agreement shall be construed in light of any interpretation and/or guidance on HIPAA and the Privacy Regulation issued by HHS from time to time.

5.4. Survival. Section 6 and this Section 5.4 shall survive termination of this Agreement. The respective rights and obligations of Business Associate and Customer under the provisions of Sections 2.1, 2.2, and 4.5, solely with respect to Protected Health Information Business Associate retains in accordance with Section 4.5 because it is not feasible to return or destroy such Protected Health Information, shall survive termination of this Agreement for so long as such information is retained.

5.5. Amendment; Waiver; Assignment. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a

writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

5.6. Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given above, and/or via facsimile to the facsimile telephone numbers listed above. Each Party may change its address and that of its representative for notice by the giving of notice thereof in the manner herein above provided.

5.5. Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

5.6. Disputes. If any controversy, dispute or claim arises between the Parties with respect to this Agreement, the Parties shall make good faith efforts to resolve such matters informally.

6. **LIMITATION OF LIABILITY**
NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

7. **DEFINITIONS**
Regulatory citations in this Agreement are to the United States Code of Federal Regulations, as promulgated April 14, 2001, interpreted and amended from time to time by HHS, for so long as such regulations are in effect. Unless otherwise specified in this Agreement, all terms not otherwise defined shall have the meaning established for purposes of Title 45 parts 160 through 164 of the United States Code of Federal Regulations, as amended from time to time.

IN WITNESS WHEREOF, each of the undersigned has caused this Business Associate Agreement to be duly executed in its name and on its behalf effective as of the Effective Date.

Customer

By: _____

Name: _____

Title: _____

Date: _____

Insurance Benefit Spot Check, Inc.

By: _____

Name: Joseph Barkett
Title: C.F.O.

Date: _____

