

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“BAA”) by and between [See Company Name Listed on the associated Quote/Sales order electronically accepted and signed by an authorized representative of the named Company] (“Covered Entity”) and AZCOMP Technologies, Inc. (“AZCOMP”), an Arizona corporation with offices located at 2500 S. Power Rd., Suite 117, Mesa, AZ 85209 (“Business Associate”), is effective as of the date Covered Entity accepts and signs the associated quote/sales order (“Effective Date”).

### **SECTION 1 DEFINITIONS**

“Breach” shall have the same meaning given to such term in 42 U.S.C. § 17921(1) and 45 C.F.R. § 164.402.

“Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.

“Electronic Health Record” shall have same meaning given to such term in 42 U.S.C. § 17921(5).

“Electronic Protected Health Information” or “Electronic PHI” shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. § 160.103, as applied to the information that AZCOMP creates, receives, maintains or transmits from or on behalf of Customer.

“Individual” shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

“Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 162 and Part 164, Subparts A and E.

“Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, as applied to the information created or received by AZCOMP from or on behalf of Customer.

“Required by Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.

“Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

“Security Incident” shall have the meaning given to such term in 45 C.F.R. § 164.304, but shall not include, (a) unsuccessful attempts to penetrate computer networks or servers maintained by AZCOMP and (b) immaterial incidents that occur on a routine basis, such as general “pinging” or “denial of service” attacks.

“Security Rule” shall mean the Security Standards at 45 C.F.R. Parts 160 and 162 and Part 164, Subparts A and C.

“Unsecured PHI” shall have the same meaning given to such term under 42 U.S.C. § 17931(h), and guidance promulgated thereunder. Capitalized Terms. Capitalized terms used in this BAA and not otherwise defined herein shall have the meanings set forth in the Privacy Rule, the Security Rule, and the HITECH Act, which definitions are incorporated in this BAA by reference.

### **SECTION 2: PERMITTED USES AND DISCLOSURES OF PHI**

*2.1 Uses and Disclosures of PHI Pursuant to Agreement.* Except as otherwise limited in this BAA, AZCOMP may use or disclose PHI to perform functions, activities or services for, or on behalf of, Customer as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Customer.

*2.2 Permitted Uses of PHI by AZCOMP.* Except as otherwise limited in this BAA, AZCOMP may use PHI for the proper management and administration of AZCOMP or to carry out the legal responsibilities of AZCOMP.

*2.3 Permitted Disclosures of PHI by AZCOMP.* Except as otherwise limited in this BAA, AZCOMP may disclose PHI for the proper management and administration of AZCOMP, provided that the disclosures are Required by Law, or AZCOMP obtains reasonable assurances from the person to whom the information is disclosed that it will remain

confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person (which purpose must be consistent with the limitations imposed upon AZCOMP pursuant to this BAA), and that the person agrees to notify AZCOMP of any instances of which it is aware in which the confidentiality of the information has been breached. AZCOMP may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1).

**2.4 Data Aggregation.** Except as otherwise limited in this BAA, AZCOMP may use PHI to provide Data Aggregation services as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B), including use of PHI for statistical compilations, reports, research and all other purposes allowed under applicable law.

**2.5 De-identified Data.** AZCOMP may create de-identified PHI in accordance with the standards set forth in 45 C.F.R. § 164.514(b) and may use or disclose such de-identified data for any purpose.

**2.6 Disclosure Pursuant to Authorization.** Without limiting the generality of the foregoing, AZCOMP reserves the right at its sole discretion to disclose an Individual's PHI in response to and in accordance with a valid authorization executed by such individual that meets the requirements set forth in the Privacy Rule.

### **SECTION 3: OBLIGATIONS OF AZCOMP**

#### **3.1 Appropriate Safeguards.**

**3.1.1 Privacy of PHI.** AZCOMP will develop, implement, maintain, and use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by any Agreement(s) and this BAA. The safeguards must reasonably protect PHI from any intentional or unintentional use or disclosure in violation of the Privacy Rule and this BAA, and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this BAA.

**3.1.2. Security of PHI.** AZCOMP will develop, implement, maintain, and use appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI, as required by the Security Rule. Commencing on February 17, 2010, AZCOMP will comply with the provisions of 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316 relating to implementation of administrative, physical and technical safeguards with respect to Electronic PHI in the same manner that such provisions apply to a HIPAA covered entity. AZCOMP will also comply with any additional security requirements contained in the HITECH Act that are applicable to a business associate.

**3.2 Reporting of Improper Use or Disclosure, Security Incident or Breach.** AZCOMP will report to Customer any use or disclosure of PHI not provided for by the Agreement of which it becomes aware. AZCOMP will report to Customer any Security Incident of which it becomes aware. AZCOMP will notify Customer of any Breach of Unsecured PHI as soon as practicable, and no later than 30 days after discovery of such Breach. AZCOMP's notification to Customer of a Breach will include: (a) the identification of each individual whose Unsecured PHI has been, or is reasonably believed by AZCOMP to have been, accessed, acquired or disclosed during the Breach; and (b) any particulars regarding the breach that Customer would need to include in its notification, as such particulars are identified in 42 U.S.C. § 17932 and 45 C.F.R. § 164.404.

**3.3 AZCOMP's Agents.** AZCOMP will ensure that any agent or subcontractor to whom it provides PHI received from, or created or received by AZCOMP on behalf of Customer, agrees to restrictions and conditions that are substantially similar to those that apply through this BAA to AZCOMP with respect to such PHI. AZCOMP will ensure that any agent, including a subcontractor, to whom it provides Electronic PHI agrees to implement reasonable and appropriate safeguards to protect such information.

**3.4 Access to PHI.** The parties do not intend for AZCOMP to maintain any PHI in a Designated Record Set for Customer. To the extent AZCOMP possesses PHI in a Designated Record Set, AZCOMP agrees to make such information available to Customer pursuant to 45 C.F.R. § 164.524 and 42 U.S.C. § 17935(e)(1), as applicable, within ten business days of AZCOMP's receipt of a written request from Customer; provided, however, that AZCOMP is not required to provide such access where the PHI contained in a Designated Record Set is duplicative of the PHI contained in a Designated Record Set possessed by Customer. If an Individual makes a request for access

pursuant to 45 C.F.R. § 164.524 directly to AZCOMP, or inquires about his or her right to access, AZCOMP will direct the Individual to Customer.

**3.5 Amendment of PHI.** The parties do not intend for AZCOMP to maintain any PHI in a Designated Record Set for Customer. To the extent AZCOMP possesses PHI in a Designated Record Set, AZCOMP agrees to make such information available to Customer for amendment pursuant to 45 C.F.R. § 164.526 within 20 business days of AZCOMP's receipt of a written request from Customer. If an Individual submits a written request for amendment pursuant to 45 C.F.R. § 164.526 directly to AZCOMP, or inquires about his or her right to amendment, AZCOMP will direct the Individual to Customer.

**3.6 Documentation of Disclosures.** AZCOMP agrees to document such disclosures of PHI and information related to such disclosures as would be required for Customer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528, and 42 U.S.C. § 17935(c), as applicable. AZCOMP will document, at a minimum, the following information ("Disclosure Information"): (a) the date of the disclosure; (b) the name and, if known, the address of the recipient of the PHI; (c) a brief description of the PHI disclosed; (d) the purpose of the disclosure that includes an explanation of the basis for such disclosure; and (e) any additional information required under the HITECH Act and any implementing regulations.

**3.7 Accounting of Disclosures.** AZCOMP agrees to provide to Customer, within 20 business days of AZCOMP's receipt of a written request from Customer, information collected in accordance with Section 3.6 of this BAA, to permit Customer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528, and 42 U.S.C. § 17935(c), as applicable.

**3.8 Governmental Access to Records.** AZCOMP will make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by AZCOMP on behalf of, Customer available to the Secretary for purposes of the Secretary determining Customer's compliance with the Privacy Rule and the Security Rule.

**3.9 Mitigation.** To the extent practicable, AZCOMP will cooperate with Customer's efforts to mitigate a harmful effect that is known to AZCOMP of a use or disclosure of PHI not provided for in this BAA.

**3.10 Minimum Necessary.** AZCOMP will request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure, in accordance with 42 U.S.C. § 17935(b) and regulations promulgated thereunder.

**3.11 Limitation on Marketing.** AZCOMP may use and disclose PHI for marketing purposes only as expressly directed by Customer, and in accordance with 42 U.S.C. § 17936(a). AZCOMP will not use or disclose PHI for fundraising purposes.

**3.12 Limitation on Sale of Electronic Health Records and PHI.** AZCOMP will comply with the prohibition on the sale of Electronic Health Records and PHI set forth in 42 U.S.C. § 17935(d).

**3.13 HITECH Act Applicability.** AZCOMP acknowledges that enactment of the HITECH Act amended certain provisions of HIPAA in ways that now directly regulate, or will on future dates directly regulate, AZCOMP under the Privacy Rule and Security Rule. To the extent not referenced or incorporated herein, requirements applicable to AZCOMP under the HITECH Act are hereby incorporated by reference into this BAA. AZCOMP agrees to comply with applicable requirements imposed under the HITECH Act, as of the effective date of each such requirement.

#### **SECTION 4: OBLIGATIONS OF CUSTOMER**

**4.1 Notice of Privacy Practices.** Customer will notify AZCOMP of any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect AZCOMP's use or disclosure of PHI. Customer will provide such notice no later than 15 days prior to the effective date of the limitation.

**4.2 Notification of Changes Regarding Individual Permission.** Customer will notify AZCOMP of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect

AZCOMP's use or disclosure of PHI. Customer will provide such notice no later than 15 days prior to the effective date of the change. Customer will obtain any consent or authorization that may be required by the Privacy Rule, or applicable state law, prior to furnishing AZCOMP with PHI.

*4.3 Notification of Restrictions to Use or Disclosure of PHI.* Customer will notify AZCOMP of any restriction to the use or disclosure of PHI that Customer has agreed to in accordance with 45 C.F.R. § 164.522 or 42 U.S.C. § 17935(a), to the extent that such restriction may affect AZCOMP's use or disclosure of PHI. Customer will provide such notice no later than 15 days prior to the effective date of the restriction. If AZCOMP reasonably believes that any restriction agreed to by Customer pursuant to this Section may materially impair AZCOMP's ability to perform its obligations under any Agreement(s) or this BAA, the parties will mutually agree upon any necessary modification of AZCOMP's obligations under such agreements.

*4.4 Permissible Requests by Customer.* Customer will not request AZCOMP to use or disclose PHI in any manner that would not be permissible under the Privacy Rule, the Security Rule or the HITECH Act if done by Customer, except as permitted pursuant to the provisions of Sections 2.2, 2.3, 2.4, 2.5 and 2.6 of this BAA.

## **SECTION 5: TERM AND TERMINATION**

*5.1 Term.* The term of this BAA will commence as of the Effective Date, and will terminate when all of the PHI provided by Customer to AZCOMP, or created or received by AZCOMP on behalf of Customer, is destroyed or returned to Customer or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with Section 5.3.

*5.2 Termination for Cause.* Upon either party's knowledge of a material breach by the other party of this BAA, such party will provide written notice to the breaching party detailing the nature of the breach and providing an opportunity to cure the breach within 30 business days. Upon the expiration of such 30 day cure period, the non-breaching party may terminate this BAA and, at its election, if cure is not possible.

*5.3 Effect of Termination.*

*5.3.1* Except as provided in Section 5.3.2, upon termination of this BAA for any reason, AZCOMP will return or destroy all PHI received from Customer, or created or received by AZCOMP on behalf of Customer, and will retain no copies of the PHI. This provision will apply to PHI that is in the possession of subcontractors or agents of AZCOMP.

*5.3.2* If it is infeasible for AZCOMP to return or destroy the PHI upon termination this BAA, AZCOMP will: (a) extend the protections of this BAA to such PHI; (b) limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as AZCOMP maintains such PHI; and (c) never disclose such PHI to another AZCOMP client or third party unless such information has been de-identified in accordance with the standards set forth in 45 C.F.R. § 164.514(b).

## **SECTION 6: SURVIVAL**

The respective rights and obligations of AZCOMP under Section 5.3 of this BAA will survive the termination of the BAA and any Agreement(s).

## **SECTION 7: EFFECT OF BAA**

In the event of any inconsistency between the provisions of this BAA and any other agreements between the two parties, the provisions of the BAA will control. In the event of inconsistency between the provisions of this BAA and mandatory provisions of the Privacy Rule, the Security Rule or the HITECH Act, as amended, or their interpretation by any court or regulatory agency with authority over AZCOMP or Customer, such interpretation will control; provided, however, that if any relevant provision of the Privacy Rule, the Security Rule or the HITECH Act is

amended in a manner that changes the obligations of AZCOMP or Customer that are embodied in terms of this BAA, then the parties agree to negotiate in good faith appropriate non-financial terms or amendments to this BAA to give effect to such revised obligations. Where provisions of the BAA are different from those mandated in the Privacy Rule, the Security Rule, or the HITECH Act, but are nonetheless permitted by such rules as interpreted by courts or agencies, the provisions of the BAA will control.

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