

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered into by and between Antek HealthWare, LLC, a Maryland Limited Liability Company ("We" or "Us"), and _____, a _____ corporation ("Client").

I. Business Associate.

The parties have entered into a separate written agreement licensing to Client the software known as "LabDAQ" (the "License") under which We provide installation, training, support and maintenance services for LabDAQ (the "Services"). We acknowledge that the Health Insurance Portability and Accountability Act of 1996, as amended and in effect, and its implementing regulations ("HIPAA") applies to Protected Health Information (as defined under HIPAA) that We may obtain from, or create on behalf of, Client in connection with performance of the Services ("PHI").

II. Our Use and Disclosure of PHI.

Except as otherwise restricted by the License, We may use or disclose PHI solely for the following purposes: (1) on Client's behalf or to provide the Services in accordance with the License, provided that such use or disclosure would not violate HIPAA if made by Client; (2) for proper management and administration of Our business or to carry out its legal responsibilities; (3) to provide data aggregation services relating to Client's health care operations; and (4) otherwise as permitted or required by HIPAA and/or other applicable law. Additionally, We shall not disclose PHI to persons other than Our employees, officers or directors unless such disclosure is required by law, or We obtain reasonable assurances from the person to whom disclosure is made that the PHI disclosed will be held in confidence and used or further disclosed only as required by law or for the purpose for which it was disclosed, and such person, as it becomes aware of any breach in the confidentiality of such PHI, promptly notifies Us of the circumstances of such breach.

III. Obligations as to PHI.

A. Our Obligations. We agree to: (1) maintain confidential all PHI and not use or disclose PHI except as permitted or required by this Agreement; (2) use commercially and technologically reasonable administrative, technical and physical safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement and to preserve the data integrity and confidentiality of PHI, including and not limited to: (i) restricting access to the physical locations where PHI is maintained or stored; (ii) maintaining security over electronic and tangible copies of PHI; (iii) restricting access to PHI only to Our employees who have a need to know of PHI in connection with the purpose of the intended disclosure or use; (iv) informing Our employees of the restrictions and requirements of this Agreement; (v) copying PHI only when reasonably necessary; and (vi) implementing such other practices as may be reasonably required to comply with this Agreement; (3) take commercially reasonable actions to ensure that all agents and subcontractors to whom We provide PHI agree to the restrictions and conditions of this Agreement and obtain reasonable assurances from such agents and subcontractors of their compliance; (4) provide access at reasonable business hours, upon Client's written request, to PHI in a designated record set (as defined under HIPAA) to meet Client's obligations under HIPAA; (5) promptly amend PHI in a designated record set as directed in writing by Client; (6) make Our internal books and records relating to the use and disclosure of PHI available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining Client's compliance with HIPAA; and (7) document Our disclosures and uses of PHI, and promptly provide such information to Client upon Client's written request, so that Client may respond to an individual's request under HIPAA for an accounting of PHI uses and disclosures. We reserve the right to charge Client a reasonable fee for services provided under Section III(4), (6) and (7) above, including costs of preparation, copying and mailing, in the event that Client requests copies of PHI in hardcopy, paper form, or otherwise in a form or format that We cannot electronically provide.

B. Client's Obligations. Client represents and covenants to: (1) promptly provide to Us a written copy of Client's notice of privacy practices required under HIPAA, and any and all changes thereto, prior to the effective date of such amended notice; (2) promptly provide to Us any and all changes in, or revocation of, an individual's permission to use or disclose PHI referring or relating to such individual, if such changes or revocation affect Our use or disclosure of PHI under this Agreement; (3) promptly notify Us of any restriction Client agreed to under HIPAA which restriction is related to Our use or disclosure of PHI under this Agreement; (4) obtain from individuals all executed authorizations and/or consents required under HIPAA for Us to fully provide the Services as contemplated under the License, and promptly provide to Us copies of such executed consent and/or authorizations to the extent reasonably necessary for Us to provide the Services; (5) make use of PHI disclosed by Us to Client solely as permitted or required under HIPAA and/or other applicable law; and (6) not request that We use or disclose PHI in any manner that HIPAA would not permit if such use or disclosure was directly made by Client.

C. Mutual Obligations. Each party represents and covenants to: (1) promptly, upon becoming aware of any use or disclosure of PHI that is inconsistent with this Agreement, electronically notify the other party of the circumstances of such use or disclosure; (2) take commercially reasonable actions to mitigate, to the extent reasonably practicable, any harmful effect that is known to such party, of any use or disclosure of PHI that is in material violation of this Agreement; (3) limit the amount of PHI used or disclosed to the other party to the minimum necessary to accomplish the intended purpose for the use or disclosure; (4) document and keep current its internal policies and procedures to safeguard PHI and, upon request, provide to the other party a copy of such policies, and any and all changes thereto, prior to the effective date of such policies or any amendment thereto.

VI. Applicability of this Agreement.

This Agreement does not apply to information that has been de-identified. De-identified information is not PHI, but rather is information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual. De-identified information created by Us in compliance with applicable law shall be solely owned by Us.

VII. Standard Transactions.

If We conduct, in whole or in part, standard transactions (as defined under HIPAA) for or on behalf of Client, the following provisions of this Section VII shall apply.

A. Our Obligations. We represent and covenant to: (1) obtain reasonable assurances from each of Our agents and subcontractors involved in the conduct of transactions (as defined under HIPAA) for or on behalf of Client that such agent or subcontractor will comply with HIPAA in its conduct of such transactions; (2) use Our best commercial efforts not to enter into any trading partner agreement that: (i) changes the definition, data condition or use of a data element or segment in a standard (as defined under HIPAA); (ii) adds any data elements or segments to the maximum defined data set; (iii) uses any code or data elements that are either marked "not used" in the standard's implementation specification or are not in the standard's implementation specification(s); or (iv) changes the meaning or intent of the standard's implementation specification(s); and (3) take commercially reasonable actions to require each of Our agents and subcontractors involved in the conduct of transactions for or on behalf of Client to comply with subsection (A)(2) above.

B. Client Obligations. Client represents and covenants to: (1) promptly notify Us of any restriction Client agreed to in any trading partner agreement or business associate agreement which restriction is related to or in any way affects Our conduct of transactions in connection with the License; and (2) not request that We conduct any transaction in any manner that HIPAA would not permit if such transaction was conducted directly by Client.

C. Mutual Obligations. Each party represents and covenants to: (1) adhere to, and cooperate to develop, a mutually acceptable testing schedule for all standard transactions to be conducted between Client and Us in connection with the License; and (2) comply with HIPAA in its conduct of transactions performed in connection with the License.

VIII. Compliance with HIPAA Security Rule.

We hereby agree to the following provisions concerning "electronic PHI," as such term is defined in 45 CFR § 160.103:

- A.** Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI it creates, receives, maintains or transmits on behalf of Client as required to comply with HIPAA Security Regulations at 45 CFR Parts 160, 162 and 164.
- B.** Ensure that any agents, including but not limited to contractors and subcontractors, to which we provide electronic PHI pertaining to Client, agree to implement reasonable and appropriate safeguards to protect it.
- C.** Report to Client any security incident of which we becomes aware. "Security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- D.** Authorize termination of the contract by the client, if the client determines that we have violated a material term of the contract.

IX. Warranties and Covenants.

Each party warrants and/or covenants that: (i) it has the power and authority to execute this Agreement and has taken all necessary corporate action to authorize the execution and delivery of this Agreement; and (ii) this Agreement is and shall be the legal, valid and binding obligation of such party, enforceable in accordance with its terms. OTHER THAN AS EXPRESSLY SET FORTH HEREIN OR IN THE LICENSE, NEITHER PARTY MAKES ANY OTHER EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WHETHER ORAL OR WRITTEN. EXCEPT AS SET FORTH EXPRESSLY HEREIN, WE SHALL NOT BE LIABLE FOR THE QUALITY OR ACCURACY OF PHI PROVIDED BY CLIENT OR ANY THIRD PARTY OR FOR ANY INACCURATE RESULTS DUE TO OUR PROCESSING OF ANY SUCH PHI.

X. Indemnification.

Each party agrees to indemnify, defend and hold harmless the other party, its subsidiaries, associated companies, employees, directors, officers and agents from and against all damage, liability, cost and expense (including reasonable attorneys' fees) incurred as a result of a third party claim arising from: (i) the gross negligence or willful misconduct of such party or such party's employees or contractors; or (ii) such party's material breach of any provision of this Agreement or violation of applicable law. Notwithstanding, neither party shall be liable to the other to the extent that such other party has incurred liability to a third party as a result of its own material breach of this Agreement, negligence or intentional misconduct. The obligation to provide indemnification under this section is contingent upon the indemnified party: (i) promptly notifying the indemnifying party in writing of each claim; (ii) giving the indemnifying party sole control over the defense and settlement of the claim, provided that any settlement contains the full release of the indemnified party; and (iii) reasonably cooperating in defense and settlement efforts.

XI. Limitation of Liability.

IN NO EVENT WILL EITHER PARTY, OR ANY OF THEIR SUBSIDIARIES, ASSOCIATED COMPANIES OR LICENSORS BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY UNDER THIS AGREEMENT OR OTHERWISE,

REGARDLESS OF THE FORM OF CLAIM OR ACTION FOR SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES OR COSTS (INCLUDING LEGAL FEES AND EXPENSES), OR LOSS OF GOODWILL OR PROFIT IN CONNECTION WITH ANY CLAIM ARISING FROM THIS AGREEMENT, EVEN IF SUCH PARTY OR ANY OF ITS SUBSIDIARIES, ASSOCIATED COMPANIES, OR LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR COSTS. The limitation of liability set forth above shall not apply: (i) where the party seeking the benefit of the limitation has acted with gross negligence or engaged in willful misconduct; (ii) to third party claims for which the party seeking the benefit of the limitation owes a duty of indemnity under this Agreement; (iii) to claims that are actually covered by insurance, in which case such claims shall be limited to the actual insurance coverage (and any deductible shall be paid by the party carrying such coverage).

XII. Term and Termination.

A. Term. This Agreement shall become effective on the date it is fully executed by the parties and, subject to subpart B below, shall terminate when all PHI Client provided to Us, or We created or received on behalf of Client, is either destroyed or returned to Client, in Our sole discretion.

B. Termination. (1) Either party may terminate this Agreement at any time upon the giving of written notice in the event that the other party materially fails to perform this Agreement, provided that the party receiving the notice fails to cure the default within thirty (30) calendar days after the aggrieved party shall have given its notice specifying such default. A non-breaching party terminating this Agreement in accordance with this subpart B(1) may elect to view the breach as grounds for termination of the License for cause (without additional notice or right to cure), provided that the party in breach is notified of such election in the notice of default. Alternatively, in the event that the non-breaching party reasonably determines within the thirty (30) day cure period that the other party's breach is either incapable of cure or unable to be cured despite the cure period, the non-breaching party may elect not to terminate this Agreement (thereby also continuing in effect the License) and to notify the Secretary of the Department of Health and Human Services of such breach, by providing the party in breach with written notice of such election on or before the last day of the cure period. (2) Further, this Agreement shall automatically terminate without notice or a right to cure upon: (i) any termination or expiration of the License between the parties; or (ii) any party's assignment for the benefit of creditors or any commencement by or against a party of any proceeding in bankruptcy, insolvency, or reorganization pursuant to bankruptcy laws or laws of debtor's moratorium.

C. Effect of Termination. Termination of this Agreement shall immediately effect termination of the License. All provisions of the License and this Agreement which, by their terms, survive termination shall continue in full force and effect. Upon termination of this Agreement, We shall execute a data inspection of the electronic databases containing PHI, so that upon completion of a data scrub, all PHI provided by, or created or received on behalf of, Client in all live electronic databases owned or operated by Us will be rendered inaccessible by any user of the databases other than Us, Our employees and agents. Additionally, We shall, if feasible, return or destroy in Our sole discretion all such PHI that We still maintain in any form and retain no copies of such PHI when no longer needed for the purpose for which disclosure was made, except that, if We reasonably determine that such return or destruction is not feasible, We shall limit further use and disclosure to those purposes that make the return or destruction of the PHI infeasible. The obligations of this Agreement shall survive termination and continue in perpetuity as to all retained PHI.

XIII. Amendment; Interpretation. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Client to comply with HIPAA. This Agreement may not be amended or modified except in writing signed by each of the parties hereto. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Client to comply with HIPAA. If any section of this Agreement is found to be invalid or unenforceable, then the meaning of that section will be interpreted, to the extent feasible, in a way that renders it enforceable. If no feasible interpretation is possible, the section will be severed from this Agreement and the remainder of this Agreement will remain in full force and effect.

XIV. Miscellaneous. In addition to any other available remedies and damages, a non-breaching other party shall be entitled to an injunction to restrain any violation of this Agreement by the breaching party, its subsidiaries, agents, servants, employees and all personnel acting for or with it, without the requirement to post a bond or security, and without proof of actual damages or irreparable injury. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, exclusive of its conflicts of laws provisions. Any controversy or claim arising out of or related to this Agreement shall be brought solely and exclusively in a court located in Baltimore, Maryland; provided, however, that either party may enforce any judgment rendered by such court in any court competent jurisdiction. The parties each hereby consent to (and waive any such challenge or objection to) personal jurisdiction and venue in Maryland, and THE PARTIES EACH AGREE TO WAIVE ITS RIGHT TO A JURY TRIAL IN ALL SUCH CASES. In any litigation or arbitration between the parties, the prevailing party shall be entitled to, and the court shall award, reimbursement of such party's expenses and costs, including and not limited to, reasonable attorneys' fees. This Agreement and all documents referred or referenced herein constitute the entire agreement between parties; provided however, that the terms and conditions of this Agreement shall supersede and control over the License as to the parties' use and disclosure of PHI. Either party may assign this Agreement at any time without a fee and without the consent of the other party to a corporate successor in interest, acquiror or other entity that purchases or obtains substantially all of the assets or stock of such party, provided that prior written notice is provided to the other party and such transferee agrees in writing to be bound by the terms and conditions of this Business Agreement in the place of such party. Except as set forth above, Client may not assign or delegate this Agreement without Our prior written consent, which shall not be unreasonably withheld. Other than the parties to this Agreement (and any permitted successors or assigns), there are no other intended beneficiaries of this Agreement and no such unintended beneficiary or third party shall have the

right to sue on or enforce this Agreement. The parties are independent contractors and not partners, joint venturers or otherwise affiliated. Except as expressly provided herein, neither party has any right or authority to assume or create any obligations of any kind or to make any representation or warranty on behalf of the other party or to bind the other party in any manner whatsoever. All written communications between the parties shall be sent by First Class Mail (with delivery confirmation) or recognized common courier, properly prepaid and sent to the addresses specified in this Agreement or the License, or by electronic mail or facsimile. All such communications shall be deemed received upon the earlier of: (i) actual receipt or actual delivery to the address specified in accordance with this Agreement; (ii) three (3) days after notice is deposited in a proper mail receptacle; or (iii) upon receipt by the transmitting party of confirmation or answer-back (if delivery is by facsimile or electronic mail). By written communication, either party may designate different contact information for purposes hereof.

CLIENT: _____

ANTEK HEALTHWARE, LLC.

By: _____

By: _____

Name & Title: _____

Name & Title: _____

Date: _____

Date: _____

Addr: _____

Addr: 228 Business Center Drive, Reisterstown, MD 21136

Phone: (____) _____ Fax: (____) _____

Phone: (800) 359 - 0911 Fax: (410) 517 - 0331

Email: _____

Email: _____@antekhealthware.com