

# SAMPLE – For Illustrative Use Only

## Chain of Trust Partner Agreement

### *Practitioner and Facility Development Tips*

***Chain of Trust Partner Agreements is part of a comprehensive information security program consisting of written policies and procedures.*** These policies and procedures cover operating standards, training, technical and procedural controls, risk assessment, auditing and monitoring, and assigned responsibility for management of the information security program. ***This document provides practitioners and facilities with best practice guidelines for developing an organization specific Chain of Trust Partner Agreement.***

#### **Best Practices - Development Guidelines:**

- *Solicit legal counsel to develop and review contract language for Chain of Trust Partner Agreements.*
- *Identify all parties to be included in a Chain of Trust Partner Agreements.*
- *Look to utilize and modify existing confidentiality agreements currently in place with third party electronic trading partners.*
  - *Identify data rights responsibilities and accountability of trading partners.*
  - *Identify the consequences of failure by either party to abide by the Chain of Trust Partner Agreement.*
  - *Establish a monitoring process and policy to ensure that compliance is met.*
  - *Determine procedure if trading partner refuses to sign a Chain of Trust Partner Agreement.*

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## Sample Chain of Trust Partner Agreement:

*This form is provided without any warranty, express or implied, as to its legal effect and completeness. Use of this form is entirely at your own risk.*

This Chain of Trust Agreement is made the \_\_\_\_\_ day of \_\_\_\_\_, 2000, at \_\_\_\_\_, by and between HEALTH CARE ORGANIZATION (the "ORGANIZATION") and BUSINESS PARTNER (the "RECIPIENT"). WHEREAS, ORGANIZATION maintains and operates at \_\_\_\_\_ WHEREAS, RECIPIENT performs \_\_\_\_\_ work which requires it to have access to information regarding ORGANIZATION'S confidential and protected health information ("INFORMATION"); WHEREAS, ORGANIZATION desires to protect the confidentiality and integrity of the INFORMATION and to prevent inappropriate disclosure of the information; NOW THEREFORE, the parties agree as follows:

### **CONFIDENTIALITY:**

RECIPIENT agrees that RECIPIENT will not use the INFORMATION in any way detrimental to ORGANIZATION, and that RECIPIENT will keep such INFORMATION confidential. It is understood and agreed by RECIPIENT that RECIPIENT will notify all applicable business partners and employees of the confidential nature of the INFORMATION and shall direct such parties to treat INFORMATION with due diligence and care. Neither party shall disclose protected health information or other information that is considered, proprietary, sensitive, or confidential unless there is a need to know basis. Both parties agree that they will limit distribution of confidential information to only parties with a legitimate need in performance of the services as herein provided under this Agreement. Disclosure of confidential information is prohibited indefinitely, even after termination of employment or business relationship, unless specifically waived in writing by the authorized party. This section shall survive the termination, expiration, or cancellation of this Agreement.

### **TERM:**

This Agreement shall be effective \_\_\_\_\_, 2000, and shall continue \_\_\_\_\_. This Agreement shall automatically renew itself for an additional twelve-month period unless otherwise terminated by either party. In the event that this Agreement is automatically renewed, RECIPIENT agrees to be bound by the Terms and Conditions currently in effect. The confidentiality provisions of this Agreement shall survive indefinitely, even beyond the termination of this Agreement.

### **DISCLOSURES REQUIRED BY LAW:**

In the event that RECIPIENT is required by law to disclose INFORMATION, RECIPIENT agrees to provide ORGANIZATION with notice in a timely manner, so that ORGANIZATION may seek protective order as appropriate.

### **STATE AND FEDERAL STATUTE COMPLIANCE:**

RECIPIENT warrants and represents that it is in compliance, or will become compliant with all relevant federal/state statutes, rules, regulations and applicable interpretive rulings in a timely manner. Further, both parties agree to remain in compliance with all relevant federal/state statutes, rules, and regulations during the entire term of this Agreement. This includes but is not limited to HRS 323C Privacy of Health Care Information (Act87) and the Health Insurance Portability and Accountability Act (HIPAA). RECIPIENT agrees to maintain adequate safeguards to ensure that INFORMATION exchanged between ORGANIZATION and RECIPIENT is protected and used solely for the purposes agreed upon within this Agreement. Failure to comply with this provision can result in

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immediate and automatic termination of previously agreed upon business relationship, without penalty or cost to either party.

### ***POLICY AND PROCEDURE REVIEW:***

RECIPIENT shall make available on demand to ORGANIZATION a copy of all Policies and Procedures relevant to safeguarding INFORMATION.

### ***REPORT OF IMPROPER DISCLOSURE OR SYSTEMS COMPROMISE:***

ORGANIZATION and RECIPIENT agree to immediately notify all parties within their "Chain of Trust" of any improper or unauthorized access and disclosure of the INFORMATION, any misuse of the INFORMATION, including but not limited to systems' compromises. ORGANIZATION and RECIPIENT will take all necessary steps to prevent and limit any further improper or unauthorized disclosure and misuse of information. RECIPIENT shall also maintain an incident log of all improper or unauthorized disclosures. At the request of ORGANIZATION, RECIPIENT will make available to ORGANIZATION a copy of incident log.

### ***RETURN OF MATERIALS:***

Unless otherwise specifically required by statute or rule, RECIPIENT shall promptly return to ORGANIZATION all material containing or reflecting any ORGANIZATION proprietary information whether prepared by ORGANIZATION or as a result of providing services for which the RECIPIENT has been specifically authorized by ORGANIZATION. In addition, the RECIPIENT shall exercise due diligence to destroying the INFORMATION in a manner that will render non-identifiable all documents, memoranda, notes or other writings prepared by RECIPIENT, or its representatives, which are based on the INFORMATION.

### ***SUB-CONTRACTORS:***

If RECIPIENT discloses the INFORMATION to any subcontractor, independent contractor, or agent, it shall require such party to execute a CHAIN of TRUST AGREEMENT that upholds the standards contained within this Agreement.

### ***GOVERNMENT ACCESS TO RECORDS:***

In Accordance with 42 U.S.C. section 1395x(v)(1)(I), RECIPIENT agrees that until the expiration of six (6) years after the completion of services pursuant to this Agreement, RECIPIENT shall make available, upon written request to the Secretary of Health and Human Services, (for Comptroller General of the United States or any of their duly authorized representatives) its contract and books, its documents, and records which are necessary to certify the nature and extent of the cost for services agreed herein to be provided. Further, if RECIPIENT carries out its duties hereunder through a subcontract with a value or cost of \$10,000.00 or more over a twelve-month period, such subcontractor shall make available, until the expiration of six (6) years after completion of services pursuant to this Agreement, upon written request to the Secretary of Health and Human Services, (for Comptroller General of the United States, or any of their duly authorized representatives) its subcontract, books, documents, and records which are necessary to certify the nature and extent of the cost for the services agreed herein to be provided.

### ***ADDITIONAL ACCESS TO INFORMATION:***

If RECIPIENT significantly alters the INFORMATION provided by ORGANIZATION, ORGANIZATION shall have the right to access the altered information upon written request to RECIPIENT. Such access shall be provided to ORGANIZATION within a reasonable period after receipt of the request and shall be during the normal business hours of RECIPIENT. RECIPIENT shall incorporate changes or amendments to the INFORMATION if requested by the ORGANIZATION.

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### ***INJUNCTIVE RELIEF:***

RECIPIENT acknowledges that the remedy at law for any breach by it or the terms of this Agreement shall be inadequate and that the damages resulting from such breach are not readily susceptible to being measured in monetary terms. Accordingly, in the event of a breach or threatened breach by RECIPIENT of the terms of this Agreement, ORGANIZATION shall be entitled to immediate injunctive relief and may obtain a temporary order restraining any threatened or further breach. Nothing herein shall be construed as prohibiting ORGANIZATION from pursuing any other remedies available to ORGANIZATION for such breach or threatened breach, including recovery of damages from RECIPIENT. RECIPIENT further represents that it understands and agrees that the provisions of this agreement shall be strictly enforced and construed against it.

### ***THIRD PARTY BENEFICIARIES:***

Both parties understand and agree that other parties (individuals or entities) who are the subject of the INFORMATION provided to RECIPIENT are intended to be third party beneficiaries of this Agreement.

### ***SEVERABILITY:***

In the event that any provision of this Agreement violates any applicable statute, ordinance or rule of law in any jurisdiction that governs this Agreement, such provision shall be ineffective to the extent of such violation without invalidating any other provision of this Agreement.

### ***CONSTRUCTION OF AGREEMENT:***

The language in all parts of this Agreement shall in all cases be simply construed according to its fair meaning and not strictly for or against the RECIPIENT or ORGANIZATION. The headings preceding each paragraph are for convenience only and shall not in any way be construed to effect the meaning of the paragraphs themselves.

### ***HOLD HARMLESS:***

RECIPIENT agrees to indemnify, defend and hold harmless ORGANIZATION, its directors, officers, agents, shareholders, and employees against all claims, demands, or causes of action that may arise from RECIPIENT'S employees, agents, or independent contractors improper disclosure of the INFORMATION and from any intentional or negligent acts or omissions.

### ***ENTIRE AGREEMENT; AMENDMENTS; NO WAIVER:***

This Agreement contains the entire agreement between the parties with respect to the matters covered by this Agreement and supersedes all prior negotiations, agreements and employment contracts between the parties, whether oral or in writing. This Agreement may not be amended, altered or modified except by written agreement signed by all parties of this Agreement. No provision of this agreement may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.

### ***AUTHORITY:***

The persons signing below have the right and authority to execute this Agreement for their respective entities and no further approvals are necessary to create a binding Agreement.

### ***GOVERNING LAW:***

This Agreement shall be governed by the laws of the State of \_\_\_\_\_ and shall be construed in accordance therewith. IN WITNESS WHEREOF, the parties have executed this CHAIN OF TRUST AGREEMENT the day and year first written above.

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