

BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT is executed this 5th day of April, 2005, by Midwest Medical Insurance Company ("**Business Associate**").

Recitals

- A. Business Associate and the insured have an insurer/insured relationship by virtue of a professional liability insurance policy issued by Business Associate to Covered Entity ("**Insurance Policy**").
- B. Business Associate must use and/or disclose Protected Health Information received from, or created or received on behalf of Covered Entity in its performance of Services under the Insurance Policy.
- C. The insured is required by the Privacy Rule and the Security Rule issued pursuant to the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**") to obtain satisfactory assurance that Business Associate will appropriately safeguard the Protected Health Information received from, or created or received on behalf of, Covered Entity.

In consideration of the receipt of Protected Health Information and other good and valuable consideration, Business Associate agrees as follows:

Section 1 Definitions

Capitalized terms used, but not otherwise defined, in this Agreement shall have the meanings given those terms in the Privacy Rule and the Security Rule.

- 1.1 **Business Associate:** "Business Associate" shall mean Midwest Medical Insurance Company.
- 1.2 **Covered Entity:** "Covered Entity" shall mean the insured.
- 1.3 **Electronic Protected Health Information:** "Electronic Protected Health Information" shall mean Protected Health Information that is transmitted or maintained in electronic format or by electronic media.
- 1.4 **Individual:** "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).
- 1.5 **Privacy Rule:** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. parts §160 and §164, subparts A and E.
- 1.6 **Protected Health Information:** "Protected Health Information" shall have the same meaning as the term "Protected Health Information" in 45 C.F.R. § 164.501, limited to the information received from, or created, or received by Business Associate on behalf of Covered Entity.
- 1.7 **Secretary:** "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.

- 1.8 **Security Incident:** “Security Incident” shall have the same meaning as the term “Security Incident” in 45 C.F.R. § 164.304.
- 1.9 **Security Rule:** “Security Rule” shall mean the Standards for Security of Electronic Protected Health Information at 45 C.F.R. parts §160 and §164, subparts A and C.

Section 2
Obligations and Activities of Business Associate

Business Associate agrees to the following:

- 2.1 **Not Use or Disclose PHI Unless Permitted or Required.** Business Associate agrees not to use or disclose Protected Health Information other than as permitted or required by this Agreement, or as Required By Law, or as otherwise authorized by Covered Entity.
- 2.2 **Use Safeguards.** Business Associate agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement. Business Associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any electronic Protected Health Information Business Associate creates, receives, maintains or transmits on behalf of Covered Entity.
- 2.3 **Mitigate Harmful Effects.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of this Agreement.
- 2.4 **Report Unpermitted Disclosures of PHI.** Business Associate agrees to report to Covered Entity any use or disclosure of Protected Health Information not permitted or required by this Agreement of which Business Associate becomes aware. Business Associate also agrees to report to Covered Entity any Security Incident related to Protected Health Information of which Business Associate becomes aware.
- 2.5 **Compliance of Agents.** Business Associate agrees to require any agents, including subcontractors, to whom it provides Protected Health Information to agree to the same restrictions and conditions that apply to Business Associate through this Agreement with respect to such Protected Health Information. Business Associate also agrees to ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect it.
- 2.6 **Provide Access.** Business Associate agrees to provide access, during normal business hours, to Protected Health Information in a Designated Record Set of Covered Entity to Covered Entity in order to meet the requirements of 45 C.F.R. §164.524, provided Covered Entity delivers written notice to Business Associate, at least five business days in advance, requesting such access. This provision does not apply if Business Associate and its employees, subcontractors and agents have no Protected Health Information in a Designated Record Set of Covered Entity or if the Protected Health Information held by Business Associate merely duplicates information held by Covered Entity.
- 2.7 **Incorporate Amendments.** Business Associate agrees to incorporate any amendment(s) to Protected Health Information in a Designated Record Set of Covered Entity that Covered Entity directs pursuant to 45 C.F.R. §164.526. This provision does not apply if Business

Associate and its employees, subcontractors and agents have no Protected Health Information from a Designated Record Set of Covered Entity.

- 2.8** *Disclose Practices, Books, and Records.* Unless otherwise protected or prohibited from discovery or disclosure by law, Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary for purposes of determining Covered Entity's compliance with the Privacy Rule or the Security Rule. Business Associate shall have a reasonable time within which to comply with requests for such access and in no case shall access be required in less than five (5) business days after Business Associate's receipt of such request, unless otherwise designated by the Secretary.
- 2.9** *Document Disclosures.* Business Associate agrees to maintain sufficient documentation of such disclosures of Protected Health Information by Business Associate as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. §164.528.
- 2.10** *Release Documentation of Disclosures.* On request of Covered Entity, Business Associate agrees to provide to Covered Entity documentation made in accordance with Section 2.9 of this Agreement to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. §164.528. Business Associate shall have a reasonable time within which to comply with such a request from Covered Entity and in no case shall Business Associate be required to provide such documentation in less than five (5) business days after Business Associate's receipt of such request.
- 2.11** *Respond to Requests from Individuals.* Except as this Agreement or any other agreement between Covered Entity and Business Associate may otherwise provide, in the event Business Associate receives an access, amendment, accounting of disclosure, or other similar request directly from an Individual, Business Associate will redirect the Individual to Covered Entity.

Section 3

Permitted Uses and Disclosures by Business Associates

- 3.1** *Functions and Activities on Behalf of Covered Entity.* Under the Insurance Policy, Business Associate provides Covered Entity with insurance products and services ("Services") that involve the use and disclosure of Protected Health Information. These Services may include: underwriting and providing professional liability insurance; collecting and evaluating information related to potential and actual claims and lawsuits; performing quality assessment, quality improvement, loss prevention, risk management and outcomes evaluation activities; developing clinical guidelines; reviewing the competence or qualifications of health care professionals; evaluating practitioner and provider performance; conducting training programs for students, trainees and practitioners in areas of health care to improve their skills as health care providers; training of non-health care professionals; credentialing; conducting or arranging for medical review; arranging for legal services; conducting or arranging for audits to improve compliance; and other functions necessary to perform these Services.

Except as otherwise limited by this Agreement, Business Associate may make any uses and disclosures of Protected Health Information necessary to perform Services and meet its obligations under this Agreement and under the Insurance Policy, if such use or disclosure would not violate the Privacy Rule if done by Covered Entity. All other uses or disclosures by Business

Associate not authorized by this Agreement or by specific instruction of Covered Entity are prohibited.

- 3.2 Business Associate's Management and Administration.** Except as otherwise limited by this Agreement, Business Associate may use Protected Health Information for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.
- 3.3 Disclosure by Business Associate Required by Law or With Reasonable Assurances.** Except as otherwise limited by this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate and to carry out its legal responsibilities, provided that disclosure is Required By Law, or provided that the Business Associate obtains reasonable assurances from the person or entity to whom the Protected Health Information is disclosed that: 1) the Protected Health Information will be held confidentially; 2) the Protected Health Information will be used or further disclosed only as Required By Law or for the purpose(s) for which it was disclosed to the person or entity; and 3) the person or entity will notify Business Associate of any instances of which the person or entity is aware in which the confidentiality of the information has been breached.
- 3.4 Data Aggregation Services.** Except as otherwise limited by this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. §164.504(e)(2)(i)(B).


Section 4 **Term and Termination**

- 4.1 Term.** The Term of this Agreement shall begin April 14, 2003, or the effective date of the Insurance Policy between Business Associate and Covered Entity, whichever is later. This Agreement shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is not feasible in the determination of the Business Associate to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this section.
- 4.2 Termination for Cause.** Upon Covered Entity's reasonable determination that Business Associate has breached or violated a material term of this Agreement, Covered Entity shall give Business Associate written notice of such breach and provide reasonable opportunity for Business Associate to cure the breach or end the violation. Covered Entity may terminate the Insurance Policy, and Business Associate agrees to such termination, if Business Associate has breached a material term of this Agreement and does not cure the breach or cure is not possible.
- 4.3 Effect of Termination.** Upon termination of the Insurance Policy and receipt of written demand from Covered Entity, Business Associate agrees to, if feasible, return or destroy all Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity. In the event the return or destruction of such Protected Health Information is not feasible in the determination of Business Associate, the protections of this Agreement will remain in force and Business Associate shall make no further uses and disclosures of Protected Health Information except for the proper management and administration of its business or to carry out its legal responsibilities or as Required By Law.

Section 5
Miscellaneous Provisions

- 5.1** *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the Section is in effect, or is amended, and compliance is required.
- 5.2** *Amendment.* Business Associate agrees to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA.
- 5.3** *Survival.* The rights and obligations of Business Associate under Section 4.3 of this Agreement shall survive the termination of this Agreement and the termination of the Insurance Policy.
- 5.4** *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.

Business Associate



By: William J. McDonough
President & CEO
The MMIC Group