

**Note to Users:**

The subsequent pages contain a Sample Business Associate Agreement that may be used by healthcare facilities. Be advised that this is strictly a sample and any formal Business Associate Agreement developed for your facility should be reviewed with your legal counsel.

## BUSINESS ASSOCIATE ADDENDUM

\_\_\_\_\_ **[insert client's name]** ("Covered Entity") and Accounts Receivable Management Systems, Inc. dba QUE Financial Serviceware Technologies ("Business Associate") hereby enter this Business Associate Addendum, effective \_\_\_\_\_, 2003 ("Effective Date"), which shall amend the Parties' \_\_\_\_\_ **[insert name of contract]**, dated \_\_\_\_\_ **[insert date of contract]**, ("Agreement"), as follows.

A. Covered Entity has determined that it is a "covered entity" as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

B. Pursuant to the Agreement, Business Associate performs services for Covered Entity that involve the use or disclosure of "protected health information" of patients or clients of Covered Entity ("PHI"). In light of these services, the parties have determined that Business Associate is a "business associate," as defined by HIPAA, of Covered Entity.

C. The parties now desire to enter this Business Associate Addendum to document their agreement to comply with HIPAA and Business Associate's satisfactory assurances to safeguard the PHI it uses or discloses in connection with services under the Agreement.

**NOW THEREFORE**, in consideration of the mutual promises contained herein and for other good and valuable consideration, the parties hereby agree to amend the Agreement as follows:

1. **HIPAA Compliance.** The parties agree to comply with HIPAA and to negotiate in good faith amendments to this Business Associate Addendum that become reasonably necessary during the term of the Agreement to ensure continuing compliance with HIPAA.

### 2. Use and Disclosure of PHI.

2.1. **Definition of PHI.** PHI shall have the same meaning herein as the term "protected health information" in 45 CFR § 164.501, which includes information relating to the past, present, or future physical or mental health or condition of any identifiable patient, healthcare of such individual, or payment for provision of healthcare of such individual.

2.2. **Permissible Uses and Disclosures.** Business Associate may use or disclose PHI for the following purposes:

2.2.1. To perform Business Associate's duties under the Agreement;

2.2.2. For Business Associate's management and administration purposes or to carry out the legal responsibilities of Business Associate; provided, however, that (i) Business Associate will disclose only "de-identified" PHI, as defined by HIPAA, for marketing purposes; and (ii) any other disclosure of PHI by Business Associate to a third-party will be required by law or disclosed only after the third-party provides reasonable assurances to Business Associate that the PHI will be held confidentially and used or disclosed only for the purpose requested or as required

by law and that the third-party will notify Business Associate if it becomes aware of any breach of confidentiality; or

2.2.3. As otherwise permitted or required by law.

Business Associate will make reasonable efforts to limit PHI that Business Associate requests, uses or discloses to the minimum necessary to accomplish permissible uses and disclosures. Business Associate will not use or disclose PHI other than in accordance with this Business Associate Addendum or as required by law. Covered Entity will not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done by the Covered Entity.

2.3. **Authorizations.** Covered Entity has determined that “authorizations” as defined by HIPAA need not be obtained for Business Associate’s use and disclosure of PHI under the Agreement. However, should it be determined that HIPAA requires an authorization for any such services, Covered Entity will obtain and maintain the required authorization and promptly notify Business Associate of any changes in, or revocation of, such authorization.

3. **Security of PHI.** Business Associate will implement safeguards that it deems appropriate to prevent the use or disclosure of PHI other than as permitted by this Business Associate Addendum.

4. **Agents.** Business Associate will instruct its employees, subcontractors and other agents to whom Business Associate provides PHI that they are subject to the restrictions and conditions concerning PHI that apply to Business Associate hereunder.

5. **Reporting.** Business Associate will report to Covered Entity uses or disclosures of PHI not permitted hereunder of which Business Associate becomes aware.

6. **Third-Party Requests.**

6.1. **Requests.**

6.1.1. **Requests to Business Associate.** Patients of Covered Entity who are customers of Business Associate may directly submit requests to Business Associate for (i) access to, or (ii) protections or restrictions on the use or disclosure of, the patient’s PHI in Business Associate’s records. For all other third-party requests that concern Business Associate’s records and seek (i) access to, (ii) amendment of, (iii) protections or restrictions on the use or disclosure of, or (iv) an accounting of disclosures of, the PHI of any patient or client of Covered Entity, Business Associate will refer the third-party to submit the request directly to Covered Entity for review and response.

6.1.2. **Requests to Covered Entity.** Covered Entity may forward to Business Associate third-party requests concerning Business Associate’s records that seek (i) access to, (ii) amendment of, (iii) protections or restrictions on the use or disclosure of, or (iv) an accounting of disclosures of, the PHI of any patient or client of Covered Entity. Covered Entity shall forward each such request to Business Associate, attention: HIPAA Compliance Liaison, within two (2) days of the request, to provide a reasonable time period for response.

## 6.2. **Responses to Requests.**

6.2.1. **Requests to Business Associate.** For patient requests under Section 6.1.1 for (i) access to or (ii) protections or restrictions on the use or disclosure of the patient's PHI in Business Associate's records, Business Associate will respond directly to the patient within twenty-five (25) days of Business Associate's receipt of the request, as Business Associate deems appropriate under HIPAA. Business Associate will act reasonably to keep records of such requests and disclosures.

6.2.2. **Requests to Covered Entity.** For third-party requests that Covered Entity forwards to Business Associate under Section 6.1.2, Business Associate will act reasonably to make available to Covered Entity the relevant, responsive information in Business Associate's records, and Covered Entity will be responsible for responding to the third-party. Additionally, Business Associate will incorporate into Business Associate's records such amendments of PHI as requested by Covered Entity, if required by 45 C.F.R. § 165.504(e); provided, however, that Business Associate shall determine, in its discretion, how and where each such amendment should be made to Business Associate's records.

6.3. **Subpoenas.** If Business Associate receives a subpoena to disclose PHI governed by this Business Associate Addendum, Business Associate will notify Covered Entity of the subpoena within five (5) business days of its receipt.

7. **Audits.** Business Associate will make its internal practices, books, records and policies relating to the use and disclosure of PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary of the United States Department of Health and Human Services ("Secretary") upon request by the Secretary or by Covered Entity, for purposes of determining Covered Entity's compliance with HIPAA.

8. **Return or Destruction of PHI.** Upon termination of the Agreement, Business Associate will either return to Covered Entity or destroy all PHI governed by this Business Associate Addendum, and all copies thereof, that Business Associate still maintains; provided, however, that if Business Associate concludes that the return or destruction of PHI is not feasible, Business Associate will so notify Covered Entity, extend the protections of this Business Associate Addendum to the PHI and limit further uses or disclosures of the PHI to those purposes that make its return or destruction infeasible.

9. **Cooperation.** The parties agree to cooperate in good faith to cure any alleged breach of this Business Associate Addendum. If Covered Entity determines in good faith that Business Associate has materially breached this Business Associate Addendum, Covered Entity will provide written notice to Business Associate of the breach and an opportunity for Business Associate to cure such breach within thirty (30) days or such other period as the parties mutually agree. If Covered Entity determines in good faith that the breach is not cured, Covered Entity may terminate the Agreement as amended herein, upon providing thirty (30) days written notice to Business Associate, or may instead report the breach to the Secretary. Business Associate does not agree to indemnify Covered Entity for any liability, claims, suits, awards, damages, judgments, penalties, costs, attorneys' fees or other expenses incurred by Covered Entity from any alleged breach of this Business Associate Addendum. However, Business Associate will cooperate with Covered Entity in Covered Entity's defense of any such action or administrative proceeding.

10. **Interpretation and Construction.** Although legal counsel for Business Associate has drafted this Business Associate Addendum, both parties have negotiated the terms herein and Covered Entity has been given the opportunity to have this Business Associate Addendum reviewed by legal counsel of Covered Entity's choosing. Therefore, the Parties agree that any rule of construction requiring ambiguities to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

11. **Voluntary Execution.** The parties acknowledge that HIPAA imposes new and complex regulation upon Covered Entities. Each party represents that such party has read the foregoing Agreement, understands each and every provision contained herein, with consultation by legal counsel if so desired, and is entering into this Business Associate Addendum after independent investigation, voluntarily and without fraud or undue influence.

12. **No Other Modifications.** Except as provided herein, the Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Business Associate Addendum effective as of the Effective Date.

COVERED ENTITY:

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

BUSINESS ASSOCIATE:

Accounts Receivable Management, Inc.  
dba QUE Financial Serviceware Technologies

\_\_\_\_\_

By: Patrick J. Hanigan  
President