

# Sample Chain of Trust Agreement:

## Chain of Trust Agreement

This Chain of Trust Agreement is made the day of \_\_\_\_\_, 200\_, at \_\_\_\_\_, by and between HEALTH CARE ORGANIZATION (the "ORGANIZATION") and BUSINESS PARTNER (the "RECIPIENT").

WHEREAS, ORGANIZATION maintains and operates \_\_\_\_\_;

WHEREAS, RECIPIENT performs work which requires it to have access to information regarding ORGANIZATION's confidential and proprietary health information that is considered protected pursuant to federal, state and/or local laws or regulations ("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:

### 1. CONFIDENTIALITY

Any and all INFORMATION shall be kept confidential by RECIPIENT, and shall not, without legal basis to do so and the prior written approval of ORGANIZATION, be made available to any individual or organization by RECIPIENT or used by RECIPIENT for any purpose other than the performance hereunder. RECIPIENT shall require its employees, contractors and agents to comply with the obligations set forth in this section.

In addition, RECIPIENT shall maintain, and shall require that its employees, contractors and agents maintain the confidentiality of all INFORMATION. RECIPIENT shall comply, and shall require its employees, contractor and agents to comply, with all federal and state statutes and regulations concerning confidentiality of INFORMATION, including any regulations promulgated pursuant thereto, as such statutes and regulations currently exist and as they may be amended from time to time. This provision shall survive the termination or expiration of this agreement.

### 2. TERM

This Agreement shall be effective \_\_\_\_\_, 200\_, 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.

### 3. DISCLOSURES REQUIRED BY LAW

In the event that RECIPIENT is required by law to disclose INFORMATION, RECIPIENT will provide ORGANIZATION with written notice immediately and in advance of the disclosure, so that ORGANIZATION may take whatever action is deemed appropriate.

#### **4. STATE AND FEDERAL STATUTE COMPLIANCE**

RECIPIENT shall maintain all licenses, accreditations and approvals customary to its business, and shall observe and comply with all laws, ordinances, rules, and regulations of the federal, state, parish, or municipal governments, now in force or which may hereinafter be in force. Further, RECIPIENT understands and acknowledges that RECIPIENT has an affirmative duty to be knowledgeable about and regarding existing laws, rules, and regulations that are applicable to the goods and services covered by this Agreement, and how these laws, rules and regulation apply to RECIPIENT s business.

#### **5. POLICY AND PROCEDURE REVIEW**

Upon request, RECIPIENT shall make available to ORGANIZATION any and all documentation relevant to the safeguarding of INFORMATION including but not limited to current policies and procedures, operational manuals and/or instructions, and/or employment and/or third party agreements.

#### **6. 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, or 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.

#### **7. RETURN OF MATERIALS**

Unless otherwise specifically required by statute or rule, RECIPIENT shall upon request, or at the conclusion of the agreement, return or destroy all material containing or reflecting any ORGANIZATION INFORMATION whether prepared by ORGANIZATION or as a result of providing services for which the RECIPIENT has been specifically authorized by ORGANIZATION. In the case of destruction of the material, the RECIPIENT shall exercise due diligence to destroy the INFORMATION in a manner that will render non-retrievable all documents, memoranda, notes or other writings prepared by RECIPIENT, or its representatives, which are based on the INFORMATION.

#### **8. SUB-CONTRACTORS**

RECIPIENT shall obtain written consent from ORGANIZATION prior to disclosure of INFORMATION to any third party. In addition RECIPIENT shall require any third party to execute a CHAIN of TRUST AGREEMENT that upholds the standards contained within this Agreement.

## **9. AGENCY RELATIONSHIP**

The parties acknowledge and agree that RECIPIENT is acting as ORGANIZATION s agent under an agency relationship.

## **10. TERMINATION**

If, for any reason, RECIPIENT fails to satisfactorily fulfill in a timely or proper manner RECIPIENT s obligations under this Agreement or breaches any of the promises, terms or conditions of this Agreement, and having been given notice of and opportunity of up to 5 days to cure any such default and not having taken satisfactory corrective action within the time specified by ORGANIZATION. ORGANIZATION shall have the right to terminate this Agreement by giving written notice to RECIPIENT of such termination at least seven calendar days before the effective calendar date of such termination. ORGANIZATION may terminate this agreement immediately upon written notice to RECIPIENT if RECIPIENT fails to comply with section 4 of this Agreement. Without cause, either party to this Agreement shall have the right to terminate this Agreement by giving written notice to the other party of such termination at least thirty calendar days before the effective date of such termination.

## **11. GOVERNMENT ACCESS TO RECORDS**

In Accordance with 42 U.S.C. section 1395x(v)(1)(1), RECIPIENT agrees that until the expiration of four (4) 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 four (4) 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.

## **12. 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.

### **13. 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.

### **14. 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.

### **15. 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.

### **16. 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.

### **17. 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.

### **18. GOVERNMENT HEALTHCARE PROGRAM REPRESENTATIONS**

RECIPIENT hereby represents and warrants to ORGANIZATION that neither RECIPIENT, its shareholders, members, directors, officers, agents, or employees have been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or state healthcare program, including but not limited to Medicare or Medicaid, or have been convicted, under federal or state law (including without limitation a plea of nolo contendere or participation in a first offender deterred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (a) the neglect or abuse of a patient, (b) the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or state healthcare program, (c) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, state or local government agency, (d) the unlawful, manufacture, distribution, prescription or dispensing of a controlled substance, or (e) interference with or obstruction of any investigation into any criminal offense described in (a) through (d) above. RECIPIENT further agrees to notify ORGANIZATION immediately after RECIPIENT becomes aware that the foregoing representation and warranty may be inaccurate or may be incorrect.

#### **19. 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.

#### **20. 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.

#### **21. GOVERNING LAW.**

This Agreement shall be governed by the laws of the State of Hawaii 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.