



29043 N. 59<sup>th</sup> Street  
Cave Creek, AZ 85331  
866-334-3549  
fax 866-245-2104  
<http://www.zipchart.com>

### **Business Associates Agreement of the use of MyDictation**

This agreement is entered into between ZipChart, Inc. an Arizona Corporation , heretofore referred to as “ ZipChart” and registered users of the MyDictation service a product of ZipChart, heretofore to be referred to as “our client”.

Whereas, our client will make available and /to transfer to ZipChart protected health information, in conjunction with services that are being provided by ZipChart to our client, that is confidential and must be afforded special treatment and protection. ZipChart will have access to and /or receive from client protected health information that can be used or disclosed only in accordance with this agreement and the HHS Privacy Rule.

ZipChart and our client agree to the following:

#### **Definitions**

The following terms shall have the meaning ascribed to them in this section. Other terms shall have the meaning ascribed to them in the context in which they first appear.

- Agreement shall refer to this document.
- ZipChart and MyDictation shall mean ZipChart, Inc.
- HHS Privacy Rule shall mean the Code of Federal Regulations ("CFR") Title 45, Sections 160 and 164.
- Individual shall mean the person who is the subject of the protected health information, as defined by 45 CFR 164.501.
- Protected health information shall mean any individually identifiable health information provided and/or made available by our client to ZipChart, Inc, and has the same meaning as the term "protected health information" as defined by 45 CFR 164.501.
- Parties shall mean ZipChart, Inc and our client.
- Secretary shall mean the Secretary of the Department of Health and Human Services ("HHS") and any other officer or employee of HHS to whom the authority has been delegated.

#### **Term**

The term of this agreement shall commence when our client agrees to the terms of use of the MyDictation website, or April 13, 2003 (the "Effective Date" of the HHS Privacy Rule), which ever comes first and shall expire when all of the protected health information provided by our client to ZipChart, Inc is removed from the server by our client, when the MyDictation service has been cancelled by our client, or account closed by ZipChart if there is no payment made in accordance with Terms of Use, whichever comes first.



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### **Return or Destruction of Protected Health Information**

At termination of this agreement, ZipChart, Inc hereby agrees to destroy all protected health information received from, or created or received by ZipChart, Inc. on behalf of our client. ZipChart, Inc agrees not to retain any copies of the protected health information after termination of this agreement. If return or destruction of the protected health information is not feasible, ZipChart, Inc agrees to extend the protections of this agreement for as long as necessary to protect the protected health information and to limit any further use or disclosure. ZipChart, Inc may elect to destroy all the protected health information when requested by client or 60 days after the last day of paid service, whichever comes first.

### **Limits On Use And Disclosure Established By Terms Of Agreement**

ZipChart hereby agrees that it shall be prohibited from using or disclosing the protected health information provided or made available by our client for any purpose other than as expressly permitted or required by this agreement.

### **Stated Purposes For Which ZipChart, Inc May Use Or Disclose Protected Health Information**

The parties hereby agree that ZipChart shall be permitted to use and/or disclose protected health information provided or made available from our client for the following stated purposes:

- To allow authorized, registered transcription persons to download dictation files.
- To maintain, update, or resolve problems with the MyDictation system.

### **Limits On Use And Further Disclosure Established By Agreement And Law**

ZipChart, Inc. hereby agrees that the protected health information provided or made available by our client shall not be further used or disclosed other than as permitted or required by the agreement or as required by law.

### **Appropriate Safeguards**

ZipChart, Inc. will establish and maintain appropriate safeguards to prevent any use or disclosure of protected health information.

### **Reports Of Improper Use Or Disclosure**

ZipChart, Inc. hereby agrees that it shall report to our client within two (2) days of discovery any use or disclosure of protected health information not provided or allowed by this agreement.

### **Sanctioned Procedures**

ZipChart, Inc. agrees and understands that it must develop and implement a system of sanctions for any employee, subcontractor or agent who violates this agreement or the HHS Privacy Rule.

### **Property Rights**

The protected health information shall be and remain the property of our client. ZipChart, Inc.



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agrees that it acquires no title or rights to the protected health information, including any de-identified protected health information, as a result of this agreement.

#### **Governing Law**

This agreement shall be governed by the state of Arizona.

#### **Injunctive Relief**

Notwithstanding any rights or remedies provided for in this agreement, our client retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of protected health information by ZipChart, Inc. or any agent, contractor or third party that received protected health information from ZipChart, Inc.

#### **Binding Nature and Assignment**

This agreement shall be binding on the Parties hereto and their successors and assignees, but neither Party may assign this agreement without the prior written consent of the other, whose consent shall not be unreasonably withheld.

#### **Notices**

Whenever, under this agreement one Party is required to give notice to the other, such notice shall be deemed given if mailed by First Class United States mail, postage prepaid, and addressed as follows:

ZipChart, Inc  
29043 N 59<sup>th</sup> Street  
Cave Creek, Arizona 85331

Either Party may at any time change its address for notification purposes by mailing a notice stating the change and setting forth the new address.

#### **Force Majeure**

ZipChart, Inc shall be excused from performance under this agreement for any period ZipChart, Inc is prevented from performing any services pursuant hereto, in whole or in part, as a result of an Act of God, war, civil disturbance, court order, labor dispute, or other cause beyond its reasonable control, and such nonperformance shall not be grounds for termination.

#### **Entire Agreement**

This agreement consists of this document, and constitutes the entire agreement between the Parties. There are no understandings or agreements related to this agreement which are not fully expressed in this agreement and no change, waiver or discharge or obligations arising under this agreement shall be valid unless in writing or executed by the Party against whom such change, waiver or discharge is sought to be enforced.