

Phoenix PC Data Protection Contract

This **Data Protection Agreement** (the "Agreement") made this _____ day of _____, 20____.

BETWEEN:

- -
 -
- (the "Client")

-and-

- -
 -
- (the "Contractor")

(Individually, a "Party" and collectively, the "Parties")

RECITES:

I. The Client has retained the Contractor to perform certain services more particularly set out in a separate agreement between the Parties, a copy of which is attached hereto as Schedule "A";

II. The Parties wish to set out the obligations of the Contractor related to Protected Information;

NOW THEREFORE in consideration of the mutual promises and covenants herein, the Parties agree as follows:

1. Definitions. In this Agreement,

"Confidential Information" means any information disclosed by the Client to the Contractor pursuant to this Agreement in a context which would cause a reasonable person to believe the information is intended to be treated as confidential, including but not limited to, documents expressly designated as confidential, and information related to the Client's members, clients, customers, processes, products, employees, facilities, equipment, security systems, information systems, finances, marketing plans, suppliers, or distributors; provided, however that "Confidential Information" shall not include information that: (i) is now generally available or becomes generally available to the public without breach of this Agreement; (ii) is explicitly approved for release by written authorization of the Client; (iii) is lawfully obtained from a third party or parties without a duty of confidentiality; (iv) is disclosed to a third party by the Client without a duty of confidentiality; (v) is known to the Contractor prior to disclosure; or (vi) is at any time developed by the Contractor independently of any such disclosure(s) from the Client;

"Personal Information" means any information about an identifiable individual or information that, when combined with other information, whether readily available or not, may identify or tend to identify an individual and includes any information related to the employees and customers of the Client;

"Protected Information" means information that is either Personal Information or Confidential Information;

2. Protected Information - General. The Contractor acknowledges that any Protected Information received by it from the Client or disclosed to it by the Client is received in trust for the sole benefit of the Client.



Phoenix PC Data Protection Contract

3. Compliance with Applicable Laws. The Contractor covenants and agrees that it will abide by, in every respect, the *Personal Information Protection Act* and any relevant and applicable similar legislation.

4. No Secondary Use of Protected Information. The Contractor covenants and agrees that it not use any Protected Information provided or disclosed by the Client for any purpose other than that for which it was provided or disclosed to the Contractor.

5. No Disclosure Without Authorization. Except as is necessary to fulfill its obligations under the agreement or as required by law, the Contractor shall not disclose any Protected Information to any third party.

6. Protection of Protected Information. The Contractor covenants and agrees that it will implement safeguards to protect against the disclosure or misuse of Protected Information that is in its care or custody and will promptly inform the Client if there is any breach or suspected breach of security related to the Protected Information. The Contractor shall protect the Client's Protected Information with the same degree of care that the Contractor uses to protect and safeguard its own like information, but not less than the degree of care that would be exercised by a prudent person given the sensitivity and strategic value of such Protected Information.

7. Cooperation. The Contractor shall cooperate as may be necessary to assist in any access requests, questions, complaints and any investigations related to the Protected Information.

8. Retention of Personal Information. The Contractor shall only retain Protected Information for as long as is reasonably necessary for the purposes for which it is disclosed to the Contractor. Following such time, the Contractor shall return or destroy any Protected Information that it has received from the Client. At the Client's request, the Contractor shall forthwith provide the Client with a statutory declaration, sworn by an officer or director of the Contractor, certifying whether its obligations under this Section have been fulfilled.

9. Compelled Disclosure. In the event that the Contractor or anyone to whom it transmits the Protected Information becomes legally required to disclose any such Protected Information, the Contractor shall provide the Client with prompt notice so that the Client may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, the Contractor shall furnish only that portion of the Protected Information which is legally required to be furnished in the opinion of the Client or Client's counsel.

10. Indemnity. The Contractor covenants and agrees that it shall indemnify and hold the Client harmless from and against any and all losses, costs, claims, legal fees and liabilities related to or derived from any breach of this Agreement by the Contractor or its employees, agents, officers, directors and others for whom it is in law responsible.

11. Irreparable Harm. The Contractor acknowledges that all Protected Information disclosed or provided to it under this Agreement is held by the Contractor in trust for the sole benefit of the Client. The Contractor acknowledges that any disclosure or misappropriation of any of the Protected Information in violation of this Agreement may cause the Client irreparable harm and/or harm that is impossible to quantify, and therefore agrees that the Client shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as the Client shall deem appropriate. Such right of Client is to be in addition to the remedies otherwise available to the Client at law or in equity. Such right of the Client is in addition to the remedies otherwise available to at law or in equity. The Contractor expressly waives the defense that a remedy in damages will be adequate and any requirement in an action for specific performance or injunction for the posting of a bond by the Client.



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Schedule "A"

[Attach copy of services contract]

