

HEALTH CARE PROVIDERS DATA THEFT RPG, INC.

MEMBERSHIP AGREEMENT

This Agreement (the "Agreement") is by and between Health Care Providers Data Theft RPG, Inc. ("RPG"), a Delaware Corporation and Applicant. "Applicant" or "Member" shall mean the natural person indicated on the Application for Insurance & Membership (the "Application") or, if an entity, the entity listed on the Application, its owners, directors, officers, employees, volunteers, and committee members, as well as any companies that are parents of, subsidiaries of, owned by, related to, or affiliated with Applicant.

ADDRESSES OF PARTIES

RPG has its principal offices at 1700 N Broadway, Walnut Creek, CA 94596.

Applicant has its principal residence, office or business at the mailing address listed on the Application.

EFFECTIVE DATE

This Agreement shall be effective as of the date that an Application is (1) submitted by Applicant, (2) the Membership dues are paid by the Applicant, and (3) the Applicant is accepted by the RPG or its authorized representative for Membership in the RPG (the "Effective Date").

RECITALS

Whereas RPG is a "risk purchasing group," domiciled in Delaware and formed pursuant to the Liability Risk Retention of 1986 (as amended)(15 U.S.C. 3910 et. seq.)(*"Act"*) and Delaware Law; and

Whereas RPG is formed, in part, to purchase liability insurance on a group basis for its Members to cover the similar or related liability exposure(s) to which the Members of RPG are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

Whereas Applicant represents and has provided information to RPG that Applicant is engaged in the collection, use and/or disclosure of personally identifiable information; and

Whereas Applicant desires to become a Member of RPG, in part, for the purpose of obtaining insurance coverage available to Members of RPG; and

Whereas Applicant has submitted an Application and RPG has executed acceptance of Applicant for Membership in RPG.

AGREEMENT

In consideration of the mutual promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Applicant and RPG agree as follows:

1. Acceptance of Terms & Conditions of Membership Agreement. By accepting this Agreement, Applicant agrees to become a Member of RPG and accept, abide by, and be bound by the terms and conditions of membership set forth in this Agreement.

2. Membership Benefits. RPG may offer various benefits to its Members. At its sole discretion, and at any time, RPG, upon notice to its Members, may add, change, or discontinue any benefit programs that it offers to its Members. A leading benefit provided to Members of RPG is access to an insurance program designed for and available to Members of RPG (the "Insurance Program") that is underwritten by an A-rated insurance company (the "Insurer").

3. Selection & Compensation of Administrator. RPG shall select, hire and maintain a contractual relationship with an administrator (the "Administrator") to administer its business affairs. RPG shall negotiate the Administrator's compensation. Applicant agrees to accept and not dispute RPG's selected Administrator and the compensation to be paid by RPG for the Administrator's services. Currently, the Administrator is Identity Fraud, Inc. RPG has the sole authority and discretion to (a) select and terminate the Administrator and (b) negotiate the services to be rendered by, and compensation to be paid to, the Administrator.

4. Selection & Compensation of Agent. RPG shall select an agent (the "Agent") to administer its Insurance Program. RPG shall negotiate Agent's compensation. Applicant agrees to accept and not dispute RPG's selected Agent and the compensation to be paid by RPG for such services. Currently, the Agent is Identity Fraud, Inc. / Identity Fraud Insurance Services. RPG has authorized Agent's compensation plan. RPG has the sole authority and discretion to (a) select and terminate the Agent and (b) negotiate the compensation to be paid for Agent's services.

5. Rights of Members. Applicant's only rights as a Member of RPG shall be to apply for and purchase liability insurance on a group basis. Applicant shall have no other rights whatsoever as a Member or otherwise with respect to RPG. Without limiting the generality of the foregoing, Applicant shall have no right as a Member of RPG or otherwise under the:

- a) bylaws, governing documents, or other corporate documents of RPG; or
- b) general corporation laws of any state, including, but not limited to, any state in which Applicant or RPG is domiciled or in which Applicant or RPG have connections or operations.

6. Term & Termination of Membership. Applicant's membership in RPG shall commence on the inception date of insurance coverage under the Insurance Program and shall terminate upon the earliest to occur of the following events:

- a) Applicant's written resignation from RPG;
- b) Applicant's failure to pay premiums, Risk Purchasing Group Membership Dues ("Dues"), or taxes to Administrator on behalf of RPG when due;
- c) written notice of termination sent from RPG or Administrator to Applicant, which RPG may give for any reason whatsoever, including, without limitation, any change in Applicant's business that, in RPG's sole determination, could jeopardize the homogeneity of RPG;
- d) expiration date of insurance coverage under the Insurance Program;
- e) insolvency of Applicant; or
- f) termination or non-renewal of registration of RPG under relevant state law.

7. Risk Purchasing Group Membership Dues.

- a) **Purpose of Purchasing Group.** A primary purpose of RPG shall be to provide each of its Members, regardless of such Member's financial size and sophistication, with the ability to obtain liability insurance coverage and limits of insurance protection at a reasonable cost.
- b) **Computation & Amount of Dues.** The Dues charged to each Member may vary from Member to Member and may bear no relation to the insurance exposures or operations of the Member. The amount of the Dues charged shall be within the sole discretion of Administrator and RPG. Further, Dues may be developed in a manner otherwise considered to be arbitrary, capricious, and/or discriminatory. Neither the Administrator nor RPG shall be required to disclose the method of calculating a given Member's Dues. Dues are payable upon acceptance of the Application.
- c) **Nature & Usage of Dues.** *Dues are not insurance-related fees* and are instead used to fund the operations of the RPG. Dues charged to Applicant are *not* charged to Applicant in exchange for a:
 - i) policy of liability insurance; or
 - ii) Certificate of Insurance & Risk Purchasing Group Membership ("Certificate"); or any insurance-related service.

Dues received by the Administrator on behalf of RPG shall immediately become part of RPG's general operating funds, which may be disposed of, in the course of the management of RPG's business affairs, as RPG or the Administrator deem appropriate in their sole discretion.

8. Agreement Not to Bring Claim, Lawsuit, or Administrative Action Regarding Amount of Dues. Member agrees and affirms that the payment of its Dues, whether directly or indirectly, constitutes its waiver of any claim, lawsuit, grievance, regulatory, governmental or administrative proceeding (collectively, "Claim") against RPG Affiliates, as defined herein, based upon the amount of its Dues in relation to other Members or that such Dues were developed in a discriminatory, arbitrary or inconsistent manner. "RPG Affiliates" means the Administrator, Agent, RPG, and its and their parent, subsidiary, and affiliate entities, as well as its and their officers, directors, and employees, and other authorized business partners. Member also warrants that it shall never bring any Claim against RPG Affiliates based upon the amount it was charged as Dues in relation to other Members, or alleging that the amount it was charged in premiums, fees, or taxes was arbitrary, capricious, or discriminatory. By submitting the Application, each Member accepts these terms, and understands that the Dues component of the total costs may have been calculated in an arbitrary, capricious, or discriminatory fashion.

9. Purchasing Group Insurance Coverage.

- a) **Selection of General Terms, Conditions & Exclusions of the Insurance Program.** RPG shall select the general insurance terms, conditions, and exclusions of the Insurance Program in its sole discretion. Among other things, and without limiting the foregoing, RPG may accept or reject/decline:
 - i) Terrorism Liability Exclusions;
 - ii) Professional Liability Exclusions;
 - iii) Fungi & Bacteria Exclusions;
 - iv) Employment-Related Practices Exclusions; and/or,
 - v) Pollution Exclusions.

With regards to the general terms, conditions, and exclusions of the Insurance Programs, Applicant agrees to accept RPG's decisions and grants authority to RPG to accept or decline coverage on Applicant's behalf. Applicant also grants authority to RPG to waive or reject any of Applicant's rights under federal or state insurance laws regarding the offer and waiver or rejection of certain insurance coverages, including, but not limited to, Terrorism Liability.

- b) **Terms, Conditions & Exclusions Applicable To a Member.** Applicant is always subject to the general terms, conditions, and exclusions of the Insurance Programs as selected by RPG. Applicant does not have the right to negotiate the terms, conditions, and exclusions of its insurance coverage with the relevant Agent. While RPG is responsible for selecting the general terms, conditions, and exclusions of the Insurance Program, Applicant is

responsible for reviewing the policy terms (including price), conditions, and exclusions. Applicant may then decide if it wishes to purchase or to maintain coverage as presented.

- c) **Master Program Information.** RPG and its membership are covered under a Master Policy Program of Insurance (hereinafter "MP"). Applicant agrees to accept the terms, conditions, and exclusions of the MP, including but not limited to:

- **No Shared Limits.** Whether or not insured under a MP, Applicant shall receive its own limits of insurance, which limits are not shared with any other Member.

- **Certificate of Insurance.** Members will receive a Certificate of Insurance ("Certificate") upon acceptance into the program by the Agent, and upon receipt of full payment of all premiums, Dues, taxes, and surcharges due. A Certificate functions as a "subpolicy" under the MP issued to RPG and its membership. The Certificate is a coverage document that states which terms, conditions, and exclusions of the MP apply or do not apply to the Member. The Certificate may contain further enhancements and restrictions of coverage unique to a given Member.

- **Conflicts Between Master Policy & Certificates.** In the event that a term, condition, or exclusion in a Certificate conflicts with a term, condition, or exclusion of a related MP, the terms, conditions, and exclusions of the MP take precedence over and supersede the terms, conditions, and exclusions of the Certificate, unless the Certificate states on its face that the Certificate takes precedence over conflicting terms, conditions, or exclusions in the MP.

- **Coverage Periods.** The Applicant's Certificate will describe the length of time for which coverage applies for the Applicant.

- **State Laws; Automatic Non-Renewals & Notice of Non-Renewal.** The insurer may not be subject to all insurance laws and regulations of the state in which the Certificate is issued. Every Certificate is automatically non-renewed on its expiration date. Applicant agrees to waive its rights under any applicable state's laws with regards the receipt of prior notice of non-renewal.

By signing the Application, Applicant authorizes RPG, the Administrator, Agent, or RPG's authorized agents or representatives to: (1) retain and preserve original policy documents on Applicant's behalf; and (2) collect all premium, Dues, and taxes (if applicable) on behalf of Applicant.

- d. **Deductible.** Applicant is solely and wholly responsible for all deductible payments and/or reimbursements to the Insurer for all coverages under the policy and Certificate provided to the Applicant by the RPG.
- e. **No Backdating.** The earliest date upon which an Agent may place coverage into effect is the date upon which it receives a fully completed Application, Acceptance of Membership Terms, and full payment of all premiums, Dues, taxes and surcharges. Agent is not authorized to "backdate" coverage or cancellations.
- f. **Right to Decline Business for Any Reason.** Agent shall have the absolute right to decline any business submitted by Applicant for any reason or no reason whatsoever.
- g. **Financial Quality of Selected Carriers.** Insurance Program is underwritten by an insurance company rated "A-" or better by A.M. Best, a leading rater of financial strength for insurance companies in the United States. An "A-" rating by A.M. Best means "Secure" and indicates A.M. Best's opinion that the company has an excellent ability to meet its ongoing obligations to policyholders. The secure "A" category includes A-, A, A+, or A++ and signifies the highest rating that A.M. Best gives an insurance company. Please note that the A.M. Best rating has been provided for informational purposes only and is subject to change at any time. As a result, Member should continue to monitor the rating after this date, as RPG Affiliates accept no responsibility for updating Member on any subsequent rating changes. Please note that RPG Affiliates are unable to determine if this rating information is sufficient for Member's evaluation. Therefore, Member is encouraged to obtain any additional information deemed necessary. Please visit A.M. Best's website at www.ambest.com for rating updates and additional information.

Insurance Program is underwritten by a "Non-Admitted" or Surplus Line insurance company. Therefore, certain state insurance guaranty funds may not apply. Applicant agrees to review and accept the state surplus line insurance disclosure applicable to Applicant as presented by Administrator and/or Agent prior to their purchase.

10. Where Payment Is Made. Applicant agrees to pay the premium, Dues, and taxes (if applicable) to the Administrator, as representative for RPG. Insurance premiums shall be remitted to Agent for payment to the Insurer. Administrator shall retain the Dues, which Dues are **not insurance-related**, to fund the operations of RPG.

11. Fully Earned Premium and Dues. Applicant agrees and understands that all premiums, Dues, and taxes (if applicable) are 100% fully earned at the inception of coverage. No refunds will be given. However, without limiting the foregoing, Member may provide a statement made in writing requesting a refund and indicating the reasons why a refund should be granted and deliver said statement to Administrator and Agent, who in turn have the authority to approve or deny a refund request in their sole discretion. Similarly, Administrator is authorized to charge a reasonable fee for administering any refund or refund request as determined in its sole discretion.

12. Terms of Acceptance. By Accepting this Agreement, whether online, by phone, fax, email, or otherwise, Applicant accepts, without limitation or qualification, this Agreement and agrees, without limitation or qualification, to the terms and

conditions of this Agreement. Membership in RPG is voluntary and should be entered into only after careful and thorough review of the Agreement.

13. Hold Harmless/Indemnification. Applicant agrees to defend, indemnify and hold RPG Affiliates harmless from and against any and all claims, damages, costs and expenses, including attorney's fees, arising from or relating to Applicant's improper use or receipt of any services provided by RPG Affiliates or any violation by Applicant of this Agreement, including, without limitation, any errors, inaccuracies, misrepresentations or defects in any materials or information submitted by it.

14. Entire Agreement & Merger of Previous Agreements. This Agreement, together with the Application and the Certificate, constitutes the entire agreement between the parties and supercedes all previous agreements entered into between the parties hereto with respect to its subject matter; and all such previous agreements, whether oral or written, are hereby merged into, and superseded by, this instrument.

15. Not Assignable. Applicant agrees that its rights under this Agreement are not assignable without the express written consent of RPG.

16. Waivers. Failure by RPG Affiliates to enforce compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition. No waiver of any breach or default of this Agreement shall be valid unless in writing and signed by RPG Affiliates, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

17. Severability. If any provision of this Agreement shall be deemed illegal or unenforceable, such illegality or unenforceability shall not affect the validity and enforceability of any other legal provision hereof, which together shall then be construed as if such illegal and unenforceable provision or provisions had not been inserted herein, unless such illegality or unenforceability shall destroy the underlying business purpose of this Agreement.

18. Notice. Any notice required or that may be given under this Agreement shall be in writing and either delivered personally, sent by overnight courier, or mailed by certified mail (return receipt requested) to the addressee. Such notice shall be deemed given when so delivered personally, or, if sent by overnight courier, one (1) business day after the date so sent, or, if mailed by certified mail, three (3) business days after the date of mailing. Notices shall be sent to the address of RPG or Applicant at the mailing address specified in the beginning of this Agreement or to such other address as any party to this Agreement shall request in writing from the other party to this Agreement.

19. Arbitration. Any claim, dispute or controversy (whether in contract or tort, pursuant to statute or regulation or otherwise, and whether pre-existing, present or future) arising out of or relating to: (a) this Agreement; (b) the Privacy Policy; (c) oral or written statements, advertisements or promotions relating to this Agreement; or (d) the relationships that result from this Agreement (including relationships with third parties who are not signatories to this Agreement) (collectively, the "Claims"), will be referred to and determined by arbitration (to the exclusion of the courts). Applicant agrees to waive any right it may have to commence or participate in any class action against RPG Affiliates related to any Claims and, where applicable, Applicant also agrees to opt out of any class proceeding against RPG Affiliates. If Applicant has a Claim, it must give written notice to Administrator, Agent, and RPG of its intention to arbitrate. If RPG has a Claim, RPG will give Applicant notice to arbitrate. Arbitration of Claims will be conducted in such forum and pursuant to such rules as RPG and Member agree upon and, failing agreement, will be conducted by one arbitrator pursuant to the laws and rules relating to commercial arbitration in the State of Delaware that are in effect on the date of the notice to arbitrate.

20. Jurisdiction and Governing Law. This Agreement is governed by and shall be construed in accordance with the laws of the State of Delaware, without regard to any applicable choice of law provisions, and Applicant and RPG hereby submit to the exclusive jurisdiction of the courts of Delaware.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Company Name

Applicant Authorized Signature

Name / Title

Health Care Providers Data Theft RPG, Inc.

Authorized Signature

Name / Title