

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is effective April 14, 2003, by and between _____ ("County") and _____ ("Business Associate").

RECITALS

WHEREAS, County has created a self-funded employee health and welfare benefits plan ("Plan") for the benefit of its officials, employees, and their dependents; and

WHEREAS, the Plan is a covered entity for the purposes of the privacy provisions of Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Privacy Rule promulgated by the United States Department of Health and Human Services; and

WHEREAS, Business Associate and County have entered into an agreement ("the Service Agreement"), pursuant to which Business Associate performs functions that assist County in the operation of the Plan; and

WHEREAS, it may be necessary for County and Business Associate to disclose protected health information to each other to facilitate performance of the functions performed by Business Associate for County; and

WHEREAS, the Privacy Rule requires that there be an agreement between covered entities and business associates that governs the use and disclosure of protected health information;

NOW THEREFORE, in consideration of the beneficial relationship enjoyed by the parties pursuant to the Service Agreement, the parties agree as follows:

Part 1 Definitions

The following definitions apply to this agreement:

- 1.1 "Designated Record Set" shall mean the set of records used to make decisions about an individual that relate to: 1) medical information or billing records provided by a health care provider; or 2) the enrollment, payment, claims, adjudication, and case or medical management records maintained by or for a health plan. This includes the group of records used or maintained by a health care clearinghouse.
- 1.2 "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- 1.3 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 1.4 "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of County.
- 1.5 "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.
- 1.6 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

In addition, unless otherwise noted, any term used in this Agreement that is defined in the Privacy Rule shall have the same meaning as those terms have under the Privacy Rule.

Part II
Obligations and Activities of Business Associate

- 2.1 Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- 2.2 Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- 2.3 Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate, whether or not such disclosure is in violation of the requirements of this Agreement.
- 2.4 Business Associate agrees to report to County any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- 2.5 Business Associate agrees to ensure that any individual or entity to whom it provides Protected Health Information received from County, or created or received by Business Associate on behalf of County, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 2.6 Business Associate agrees to provide an Individual prompt and reasonable access, at the request of County, to Protected Health Information of the Individual in any Designated Record Set in its possession or control, except Protected Health Information excluded from disclosure by 45 CFR §§ 164.524(a)(1)(i),(ii),(iii), to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR § 164.524.
- 2.7 Business Associate agrees to make any amendment(s) to Protected Health Information in any Designated Record Set in its possession or control that County directs or agrees to pursuant to 45 CFR § 164.526, at the request of County or an Individual, and further agrees to do so within 30 days.
- 2.8 Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the

use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, County available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.

- 2.9 Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
- 2.10 Business Associate agrees to provide within 30 days, to either County or an Individual as directed by County, information collected in accordance with Section 2.9 of this Agreement, to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
- 2.11 Business Associate agrees to take such other feasible actions as are necessary to allow County to comply with the Privacy Rule as it pertains to the operations governed by the Service Agreement.

Part III

Permitted Uses and Disclosures by Business Associate

- 3.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as set forth in the Service Agreement governing the business relationship between County and Business Associate, provided that such use or disclosure would not violate the Privacy Rule if done by County or the minimum necessary policies and procedures of the County.
- 3.2 Business Associate may use and disclose Protected Health information for the management and administration of the Business Associate.
- 3.3 Business Associate may provide data aggregation services relating to the health care operations of County.

Part IV Obligations of County

- 4.1. County shall notify Business Associate of any limitation(s) in its notice of privacy practices of County in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- 4.2. County shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- 4.3. County shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

Part V. Permissible Requests by County

County shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the County.

Part VI. Term and Termination

- 6.1 Term. The Term of this Agreement shall be effective as of April 14, 2003, and shall terminate when all of the Protected Health Information provided by County to Business Associate, or created or received by Business Associate on behalf of County, is destroyed or returned to County.
- 6.2 Termination for Cause. Upon County's knowledge of a material breach by Business Associate, County shall either: 1) Provide an opportunity for Business Associate to cure the breach and terminate this Agreement and the Service Agreement only if Business Associate does not cure the breach or end the violation within the time specified by County; 2) Immediately terminate this Agreement and the Service

Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or 3) if neither termination nor cure are feasible, County shall report the violation to the Secretary.

- 6.3 Effect of Termination. Except as provided below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from County, or created or received by Business Associate on behalf of County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to County notification of the conditions that make return or destruction infeasible. If County agrees that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

Part VII Miscellaneous Provisions

- 7.1 Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- 7.2 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191. However, any amendments must be in writing and signed by both Parties.
- 7.3 Survival. The respective rights and obligations of Business Associate under Section 6.3 shall survive the termination of this Agreement.

7.4 Interpretation. Any ambiguity in this Agreement shall be resolved to permit County to comply with the Privacy Rule.

IN WITNESS WHEREOF, the parties have executed this Agreement to take effect on the Effective Date.

County

By: _____

Date: _____

Business Associate

By: _____

Date: _____