

**BUSINESS ASSOCIATE AGREEMENT  
BETWEEN  
THE LOCAL GOVERNMENT HEALTH  
INSURANCE BOARD AND**

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This Agreement as made and entered into this \_\_\_<sup>TH</sup> day of \_\_\_\_\_, 20\_\_, by and between the Local Government Health Insurance Board (475 Technacenter Drive, Montgomery, Alabama 36117), on behalf of the Local Government Health Insurance Plan, hereinafter collectively designated as “Covered Entities”, and \_\_\_\_\_ hereinafter designated as “Business Associate”.

WHEREAS, Covered Entities and Business Associate desire and are committed to complying with all relevant federal and state law with respect to the confidentiality and security of Protected Health Information (PHI), including, but not limited to, the federal Health Insurance Portability and Accountability Act of 1996, and accompanying regulations, as amended from time to time (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH), and any regulations promulgated thereunder.

NOW, THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, and intending to establish a business associate relationship under 45 C.F.R. § 164, the parties hereby agree as follows:

**I. Definitions**

- a. “Business Associate” shall have the same meaning as the term “business associate” at 45 C.F.R. § 160.103, and in reference to the party to this agreement, shall mean \_\_\_\_\_.
- b. “Breach” shall have the same meaning as the term “breach” set out in 45 C.F.R. § 164.402.
- c. “C.F.R.” means the Code of Federal Regulations. A reference to a C.F.R. section means that section as amended from time to time; provided that if future amendments change the designation of a section referred to herein, or transfer a substantive regulatory provision referred to herein to a different section, the section references herein shall be deemed to be amended accordingly.

- d. "Compliance Date(s)" shall mean the date(s) established by the Secretary or the United States Congress as the effective date(s) of applicability and enforceability of the Privacy Rule, Security Rule and HITECH Standards.
- e. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501 and shall include a group of records that is: (i) the enrollment, payment, claims adjudication and case or medical management record systems maintained by or for Covered Entities or (2) used, in whole or in part, by or for Covered Entities to make decisions about Individuals.
- f. "Electronic Protected Health Information" (EPHI) shall have the same meaning as the term "electronic protected health information" in 45 C.F.R. § 160.103, limited to the information received from, or created on behalf of, Covered Entities by Business Associate.
- g. "HITECH Standards" shall mean the privacy, security and security breach notification provisions applicable to a Business Associate under Subtitle D of the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of the American Recovery and Reinvestment Act of 2009, and any regulations promulgated thereunder.
- h. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103, and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- i. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. parts 160 and 164, subparts A and E.
- j. "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to the information received from, or created on behalf of, Covered Entities by Business Associate.
- k. "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- l. "Security Incident" shall have the same meanings as the term "security incident" in 45 C.F.R. § 164.304.
- m. "Security Rule" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. parts 160 and 164, subparts A and C.

Terms used, but not otherwise defined, shall have the same meaning as those terms in the Privacy Rule, Security Rule and HITECH Standards.

## **II. Obligations of Business Associate**

- a. Business Associate agrees not to use or disclose PHI other than as permitted or required by this Agreement or as Required by Law. Business Associate will take reasonable efforts to limit requests for, use and disclosure of PHI to the minimum necessary to accomplish the intended request, use or disclosure and comply with 45 C.F.R. §§ 164.502(b) and 514(d).
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement. Business Associate shall implement administrative, physical, and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that it creates, receives, maintains, or transmits on behalf of the Covered Entities as required by the Security Rule.
- c. Business Associate agrees to report to Covered Entities any use or disclosure of PHI, other than as provided for by this Agreement, promptly after Business Associate has actual knowledge of such use or disclosure, and to report promptly to the Covered Entities all Security Incidents of which it becomes aware as determined by Business Associate except that, for purposes of this Security Incident reporting requirement, the term "Security Incident" shall not include unsuccessful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system of which it becomes aware as determined by Business Associate. Following the discovery of a breach of unsecured PHI, Business Associate shall notify Covered Entities of such breach without unreasonable delay, and in no event later than 30 calendar days after such discovery. The notification will include the identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired or disclosed during the breach. A breach shall be treated as discovered as of the first day on which such breach is known or reasonably should have been known to Business Associate. Any notices required to be delivered by Covered Entities hereunder shall be at the expense of the Business Associate.

- d. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this agreement or applicable regulations.
- e. Business Associate agrees to ensure access to ePHI is limited to workforce members who require such access because of their role or function.
- f. Business Associate agrees to implement safeguards to prevent its workforce members who are not authorized to have access to such ePHI from obtaining access and to otherwise ensure compliance by its workforce with the Security Rule.
- g. Within 15 business days of receiving a request from Covered Entities, Business Associate agrees to implement restrictions on use or disclosure of PHI agreed to by the Covered Entities on behalf of an Individual in accordance with 45 C.F.R. § 164.522(a).
- h. Within 15 business days of receiving a request from Covered Entities, Business Associate agrees to honor requests for alternative communications agreed to by Covered Entities on behalf of an individual in accordance with 45 C.F.R. § 164.522(b).
- i. In accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information, including agreeing in writing to implement the same reasonable and appropriate safeguards that apply to Business Associate to protect the Covered Entities' ePHI.
- j. If Business Associate maintains PHI in a Designated Record Set, Business Associate agrees to make available to Covered Entities, within a reasonable time, such information as Covered Entities may require to fulfill Covered Entities' obligations to respond to a request for access to PHI as provided under 45 C.F.R. § 164.524 or to respond to a request to amend PHI as required under 45 C.F.R. § 164.526. Business Associate shall refer to Covered Entities all such requests that Business Associate may receive from Individuals. If Covered Entities request Business Associate to amend PHI in Business Associate's possession in order to comply with 45 C.F.R. § 164.526, Business Associate shall effectuate such

amendments no later than the date they are required to be made by 45 C.F.R. § 164.526; provided that if Business Associate receives such a request from Covered Entities less than 10 business days prior to such date, Business Associate will effectuate such amendments as soon as is reasonably practicable.

- k. If applicable, Business Associate agrees to provide to Covered Entities, within a reasonable time, such information necessary to permit Covered Entities to respond to a request by an Individual for an accounting of disclosures as provided under 45 C.F.R. § 164.528. Business Associate shall refer to Covered Entities all such requests which Business Associate may receive from individuals.
- l. Upon reasonable notice, Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI available to the U.S. Secretary of Health and Human Services, or an officer or employee of that Department to whom relevant authority has been delegated, at Covered Entities' expense in a reasonable time and manner, for purposes of the Secretary determining Covered Entities' compliance with the Privacy Rule.
- m. Notwithstanding any other provision in this agreement, Business Associate hereby acknowledges and agrees that to the extent it is functioning as a Business Associate of Covered Entities, Business Associate will comply with the HITECH Business Associate provisions and with the obligations of a Business Associate as prescribed by HIPAA and the HITECH Act. Business Associate and the Covered Entities further agree that the provisions of HIPAA and the HITECH Act that apply to Business Associates, and that are required to be incorporated by reference in a Business Associate Agreement, are incorporated into this agreement between Business Associate and Covered Entities as if set forth in this agreement in their entirety.

### **III. Permitted uses and disclosures by Business Associate**

Except as otherwise limited in this Agreement, Business Associate may:

- a. Use or disclose PHI on behalf of the Covered Entities, if such use or disclosure of PHI would not violate the Privacy Rule, including the minimum necessary standard, if done by the Covered Entities.
- b. Use or disclose PHI to perform the services outlined in any and all services agreements, or other contracts, entered into between Covered Entities and Business Associate.

- c. Use PHI for the proper management and administration of Business Associate or to fulfill any present or future legal responsibilities of Business Associate.
- d. Disclose PHI for the proper management and administration of Business Associate, or to fulfill any present or future legal responsibilities of Business Associate, provided that such disclosure is either required by law or Business Associate obtains reasonable assurances from any person to whom PHI is disclosed that such person will: (i) keep such information confidential, (ii) use or further disclose such information only for the purpose for which it was disclosed to such person or as required by law, and (iii) notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- e. Use PHI to provide data aggregation services relating to the health care operations of the Covered Entities, as provided in 45 C.F.R. § 164.501.
- f. To create de-identified data, provided that the Business Associate de-identifies the information in accordance with the Privacy Rule. De-identified information does not constitute PHI and is not subject to the terms and conditions of this Agreement.
- g. Use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

#### **IV. Obligations of Covered Entities**

- a. Covered Entities shall notify Business Associate of any facts or circumstances that affect Business Associate's use or disclosure of PHI. Such facts and circumstances include, but are not limited to: (i) any limitation or change in Covered Entities' notice of privacy practices, (ii) any changes in, or withdrawal of, an authorization provided to Covered Entities by an Individual pursuant to 45 C.F.R. § 164.508; and (iii) any restriction to the use or disclosure of PHI that Covered Entities has agreed to in accordance with 45 C.F.R. § 164.522.
- b. Covered Entities warrant that they will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule or is not otherwise authorized or permitted under this Agreement.
- c. Covered Entities acknowledge and agree that the Privacy Rules allow the Covered Entities to permit Business Associate to disclose or provide access to PHI, other than Summary Health Information, to the Plan Sponsor only after the Plan

documents have been amended to provide for the permitted and required uses and disclosures of PHI and to require the Plan Sponsor to provide a certification to the Plan that certain required provisions have been incorporated into the Plan documents before the Plan may disclose, either directly or through a Business Associate, any PHI to the Plan Sponsor.

d. Covered Entities agree that they will have entered into Business Associate Agreements with any third parties to whom Covered Entities direct and authorize Business Associate to disclose PHI.

## **V. Effective date: termination**

a. The effective date of this agreement shall be the date this agreement is signed by the parties.

b. This agreement shall terminate on the date Business Associate ceases to be obligated to perform the functions, activities, and services described in Article III Sections A and B.

c. Upon Covered Entities' knowledge of a material breach by Business Associate of this Agreement, Covered Entities shall notify Business Associate of such breach and Business Associate shall have 30 days to cure such breach. In the event Business Associate does not cure the breach, or cure is infeasible, Covered Entities shall have the right to immediately terminate this Agreement and any underlying services agreement. If cure of the material breach is infeasible, Covered Entities shall report the violation to the Secretary.

d. Upon termination of this agreement, Business Associate will return to Covered Entities, or if return is not feasible, destroy, any and all PHI that it created or received on behalf of Covered Entities and retain no copies thereof. If the return or destruction of the PHI is determined by Business Associate not to be feasible, or if Business Associate is required by law to retain such information or copies thereof, Business Associate will maintain the PHI for the period of time required under applicable law, or in accordance with Business Associate's internal record retention schedule as in effect from time to time, whichever is longer, after which time Business Associate shall return or destroy the PHI.

e. Business Associate's obligations under Sections II and III above shall survive the termination of this agreement with respect to any PHI so long as it remains in the possession of Business Associate.

## **VI. Other provisions**

a. The parties acknowledge that the foregoing provisions are designed to comply with the mandates of the Privacy and Security Rules and the HITECH Standards. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law. If the parties are unable to reach agreement regarding an amendment within 30 days of the date that Business Associate receives any written objection from Covered Entities, either party may terminate this Agreement upon 90 days written notice to the other party. Any other amendment to the Agreement unrelated to compliance with applicable law and regulations shall be effective only upon execution of a written agreement between the parties.

b. Except as it relates to the use, security and disclosure of PHI and electronic transactions, this agreement is not intended to change the terms and conditions, or the rights and obligations, of the parties under any other services agreement between them.

c. Business Associate agrees to defend, indemnify and hold harmless Covered Entities, their affiliates and directors, officers, employees, agents or assigns from and against any and all actions, causes of action, claims, suits and demands whatsoever, and from all damages, liabilities, costs, charges, debts, fines, government investigations, proceedings, and expenses whatsoever (including reasonable attorneys' fees and expenses related to any litigation or other defense of any claims), which may be asserted, or for which it may now or hereafter become subject, arising in connection with (i) any misrepresentation, breach of warranty or non-fulfillment of any undertaking on its part under this agreement; and (ii) any claims, demands, awards, judgments, actions, and proceedings made by any person or organization arising out of, or in any way connected with, Business Associate's performance under this agreement.

d. Nothing express or implied in this agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entities, Business



Associate, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

- e. The parties are and shall be independent contractors to one another, and nothing in this agreement shall be deemed to cause this agreement to create an agency, partnership, or joint venture between the parties. Except as expressly provided herein, neither party shall be liable for any debts, accounts, obligations, or other liabilities of the other party.
- f. Any ambiguity in this agreement shall be resolved in favor of a meaning that permits the Covered Entities to comply with the Privacy and Security Rules and the HITECH Standards.
- g. If any provision of this Agreement is held illegal, invalid, prohibited or unenforceable by a court of competent jurisdiction, that provision shall be limited or eliminated in that jurisdiction to the minimum extent necessary so that this agreement shall otherwise remain in full force and effect and enforceable.
- h. This Agreement shall be governed by and construed in accordance with the laws of the state of Alabama to the extent not preempted by the privacy or security or other applicable federal law.
- i. This Agreement replaces and supersedes in its (their) entirety any prior Business Associate Agreement(s) between the parties.

In witness whereof, this agreement has been signed and delivered as of the date first set forth above.

**Local Government Health  
Insurance Board**

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**By: David C. Hilyer**

\_\_\_\_\_  
**By:**

**As its: Chief Executive Officer**

**As its: \_\_\_\_\_**