

This Business Associate Agreement (“BAA”) is provided to memorialize the parties duties and responsibilities in connection with the requirements imposed by the Health Insurance Portability and Accountability Act and the Privacy, Security, Breach Notification and Standard Transactions regulations. In the event that a BAA is not formally executed by the parties, the first transmission of protected health information by, or on behalf of, the group health plan to Anthem, or its designee, shall indicate acceptance of the terms of this BAA.

This Business Associate Agreement (“Agreement”) is effective as of the following date and is made among Business Associate, and the Group Health Plan (“Plan”), and the Employer (“Employer”) named on the signature page of this Agreement:

Effective date:

Witnesseth as follows:

Whereas, Employer has established and maintains a plan of health care benefits which is administered by the Employer or its designee as an employee welfare benefit plan under the Employee Retirement Income Security Act of 1974 (“ERISA”);

Whereas, Employer has retained Business Associate to provide certain claims administrative services with respect to the Plan which are described and set forth in a separate Administrative Services Agreement among those parties (“ASO Agreement”), as amended from time to time;

Whereas, Employer is authorized to enter into this agreement on behalf of Plan;

Whereas, the parties to this Agreement desire to establish the terms under which Business Associate may use or disclose Protected Health Information (or “PHI”) such that the Plan may comply with applicable requirements of the Health Insurance Portability and Accountability Act of 1996 and the Privacy, Security, Breach Notification and Standard Transactions regulations found at 45 C.F.R. Parts 160-164 (collectively, the “HIPAA Regulations”) along with any guidance and/or regulations issued by the U.S. Department of Health and Human Services.

Now, therefore, in consideration of these premises and the mutual promises and agreements hereinafter set forth, the Plan, Employer and Business Associate hereby agree as follows:

I. Definitions

Unless otherwise defined in this Agreement, capitalized terms shall have the same meaning as used in the HIPAA Regulations. Such terms shall only have such meaning with respect to the information created or maintained in support of this Agreement and the parties ASO Agreement. A reference in this Agreement to any section of the HIPAA Regulations shall mean the section as in effect or as amended.

II. Business Associate’s Responsibilities

A. Privacy of Protected Health Information

1. **Confidentiality of Protected Health Information.** Except as permitted or required by this Agreement, Business Associate will not use or disclose Protected Health Information without the authorization of the Individual who is the subject of such information or as Required by Law.
2. **Prohibition on Non-Permitted Use or Disclosure.** Business Associate will neither use nor disclose PHI except (1) as permitted or required by this Agreement, or any other agreement between the parties, (2) as permitted in writing by the Plan or its Plan administrator, (3) as authorized by Individuals, or (4) as Required by Law.
3. **Permitted Uses and Disclosures.** Business Associate is permitted to use or disclose PHI as follows:
 - a. **Functions and Activities on Plan’s Behalf.** Business Associate will be permitted to use and disclose PHI(a) for the management, operation and administration of the Plan, (b) for the services set forth in the ASO Agreement, which include (but are not limited to) Treatment, Payment activities, and/or Health Care Operations as these terms are defined in this Agreement and 45 C.F.R. § 164.501, and (c) as otherwise required to perform its obligations under this Agreement and the ASO Agreement, or any other agreement between the parties provided that such use or disclosure would not violate the HIPAA Regulations.
 - i. **42 C.F.R. Part 2 Acknowledgement.** The parties acknowledge that information subject to 42 C.F.R. Part 2 (“Part 2”) may be used and disclosed for Plan’s payment and health care operations under the terms of this Agreement and the ASO Agreement to the extent that Business Associate is a Contractor and Plan is a Third Party Payer as defined under Part 2. Business Associate shall: (i) comply with Part 2, (ii) implement appropriate safeguards to protect such information, (iii) report non-permitted uses or disclosures of such information in a manner consistent with this BAA, and (iv) refrain from re-disclosing such information unless permitted by law.
 - b. **Business Associate’s Own Management and Administration**
 - i. **Protected Health Information Use.** Business Associate may use PHI as necessary for Business Associate’s proper management and administration or to carry out Business Associate’s legal responsibilities.

- ii. **Protected Health Information Disclosure.** Business Associate may disclose PHI as necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities only (i) if the disclosure is Required by Law, or (ii) if before the disclosure, Business Associate obtains from the entity to which the disclosure is to be made reasonable assurance, evidenced by written contract, that the entity will: (x) hold PHI in confidence, (y) use or further disclose PHI only for the purposes for which Business Associate disclosed it to the entity or as Required by Law; and (z) notify Business Associate of any instance of which the entity becomes aware in which the confidentiality of any PHI was breached.

c. Miscellaneous Functions and Activities

- i. **Protected Health Information Use.** Business Associate may use PHI as necessary for Business Associate to perform Data Aggregation services, and to create De-identified PHI, Summary Health Information and/or Limited Data Sets.
- ii. **Protected Health Information Disclosure.** Business Associate may disclose, in conformance with the HIPAA Regulations, PHI to make Incidental disclosures and to make disclosures of De-identified PHI, Limited Data Sets, and Summary Health Information. Business Associate may also disclose, in conformance with the HIPAA Regulations, PHI to Health Care Providers for permitted purposes including health care operations.
- d. **Minimum Necessary and Limited Data Set.** Business Associate's use, disclosure or request of PHI shall utilize a Limited Data Set if practicable. Otherwise, Business Associate will make reasonable efforts to use, disclose, or request only the minimum necessary amount of PHI to accomplish the intended purpose.

B. Disclosure to Plan and Employer (and their Subcontractors). Other than disclosures permitted by Section II.A.3 above, Business Associate will not disclose PHI to the Plan, its Plan administrator or Employer, or any business associate or subcontractor of such parties except as set forth in Section IX.

C. Business Associate's Subcontractors and Agents. Business Associate will require its subcontractors and agents to provide reasonable assurance, evidenced by a written contract that includes obligations consistent with this Agreement with respect to PHI.

D. Reporting Non-Permitted Use or Disclosure, Breaches and Security Incidents

- 1. **Non-permitted Use or Disclosure.** Business Associate will maintain a report of any use or disclosure of PHI not permitted by this Agreement of which Business Associate becomes aware and provide such report periodically, or upon request, to the Plan or its Plan administrator. Such report shall not include instances where Business Associate inadvertently misroutes PHI to a provider to the extent the disclosure is not a Breach as defined under 45 CFR §164.402.
 - 2. **Security Incidents.** Business Associate will report any Breach or security incidents of which Business Associate becomes aware. A security incident is an attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system, and involves only Electronic PHI that is created, received maintained or transmitted by or on behalf of Business Associate. The parties acknowledge and agree that this Section constitutes notice by Business Associate to Plan of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to Plan shall be required. "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.
 - 3. **Breach.** Business Associate will promptly, and without unreasonable delay, report to Plan any Breach of Unsecured PHI. Business Associate will cooperate with Plan in investigating the Breach and in meeting the Plan's obligations under applicable breach notification laws. In addition to providing notice to Plan of a Breach, Business Associate will provide any required notice to individuals and applicable regulators on behalf of Plan.
- E. Termination for Breach of Privacy Obligations.** Without limiting the rights of the parties set forth in the ASO agreement, each party will have the right to terminate this Agreement and the ASO Agreement if the other has engaged in a pattern of activity or practice that constitutes a material breach or violation of their obligations regarding PHI under this Agreement.

Prior to terminating this Agreement as set forth above, the terminating party shall provide the other with an opportunity to cure the material breach. If these efforts to cure the material breach are unsuccessful, as determined by the terminating party in its reasonable discretion, the parties shall terminate the ASO Agreement and this Agreement, as soon as administratively feasible. If for any reason a party has determined the other has breached the terms of this Agreement and such breach has not been cured, but the non-breaching party determines that termination of the Agreement is not feasible, the party may report such breach to the U.S. Department of Health and Human Services.

F. Disposition of PHI

- 1. **Return or Destruction Upon ASO Agreement End.** The parties agree that upon cancellation, termination, expiration or other conclusion of the ASO Agreement, destruction or return of all PHI, in whatever form or medium (including in any electronic medium under Business Associate's custody or control) is not feasible given the regulatory requirements to maintain and produce such information for extended periods of time after such termination. In addition, Business Associate is required to maintain such records to support its contractual obligations with its vendors and network providers and, as applicable, maintain Individual treatment records. Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those consistent with applicable business and legal obligations for so long as Business Associate, or its subcontractors or agents, maintains such PHI. Business Associate may destroy such PHI in accordance with applicable law and its record retention policy that it applies to similar records.

2. **Exception When Business Associate Becomes Plan's Health Insurance Issuer.** If upon cancellation, termination, expiration or other conclusion of the ASO Agreement, Business Associate (or an affiliate of Business Associate) becomes the Plan's health insurance underwriter, then Business Associate shall transfer any PHI that Business Associate created or received for or from Plan to that part of Business Associate (or affiliate of Business Associate) responsible for health insurance functions.
3. **Survival of Termination.** The provisions of this Section II.F. shall survive cancellation, termination, expiration, or other conclusion of this Agreement and the ASO Agreement.

III. Access, Amendment and Disclosure Accounting

A. Access

1. Business Associate will respond to an Individual's request for access to his or her PHI as part of Business Associate's normal customer service function, if the request is communicated to Business Associate directly by the Individual. Despite the fact that the request is not made to the Plan, Business Associate will respond to the request with respect to the PHI Business Associate and its subcontractors maintain in a manner and time frame consistent with 45 C.F.R. § 164.524.
2. In addition, Business Associate will assist the Plan in responding to requests by Individuals that are made to the Plan to invoke a right of access under the HIPAA Regulations. Upon receipt of written notice (includes faxed and emailed notice) from the Plan, Business Associate will make available for inspection and obtaining copies by the Plan, or at the Plan's direction by the Individual (or the Individual's personal representative), any PHI about the Individual created or received for or from the Plan in Business Associate's custody or control, so that the Plan may meet its access obligations under 45 C.F.R. § 164.524.

B. Amendment

1. Business Associate will respond to an Individual's request to amend his or her PHI as part of Business Associate's normal customer service functions, if the request is communicated to Business Associate directly by the Individual. Despite the fact that the request is not made to the Plan, Business Associate will respond to the request with respect to the PHI Business Associate and its subcontractors maintain in a manner and time frame consistent with requirements specified in 45 C.F.R. § 164.526.
2. In addition, Business Associate will assist the Plan in responding to requests by Individuals that are made to the Plan to invoke a right to amend under the HIPAA Regulations. Upon receipt of written notice (includes faxed and emailed notice) from the Plan, Business Associate will amend any portion of the PHI created or received for or from the Plan in Business Associate's custody or control, so that the Plan may meet its amendment obligations under 45 C.F.R. § 164.526.

C. Disclosure Accounting

1. Business Associate will respond to an Individual's request for an accounting of disclosures of his or her PHI as part of Business Associate's normal customer service function, if the request is communicated to the Business Associate directly by the Individual. Despite the fact that the request is not made to the Plan, Business Associate will respond to the request with respect to the PHI Business Associate and its subcontractors maintain in a manner and time frame consistent with requirements specified in 45 C.F.R. § 164.528.
2. In addition, Business Associate will assist the Plan in responding to requests by Individuals that are made to the Plan to invoke a right to an accounting of disclosures under the HIPAA Regulations by performing the following functions so that the Plan may meet its disclosure accounting obligation under 45 C.F.R. § 164.528:
 - a. **Disclosure Tracking.** Business Associate will record each disclosure that Business Associate makes of PHI, which is not excepted from disclosure accounting under Section III.C.2.b.
 - i. The information about each disclosure that Business Associate must record ("Disclosure Information") is (a) the disclosure date, (b) the name and (if known) address of the person or entity to whom Business Associate made the disclosure, (c) a brief description of the PHI disclosed, and (d) a brief statement of the purpose of the disclosure or a copy of any written request for disclosure under 45 C.F.R. § 164.502(a)(2)(ii) or §164.512.
 - ii. For repetitive disclosures of PHI that Business Associate makes for a single purpose to the same person or entity (including to the Plan or Employer), Business Associate may record (a) the Disclosure information for the first of these repetitive disclosures, (b) the frequency, periodicity or number of these repetitive disclosures, and (c) the date of the last of these repetitive disclosures.
 - b. **Exceptions from Disclosure Tracking.** Business Associate will not be required to record Disclosure information or otherwise account for disclosures of PHI (a) for Treatment, Payment or Health Care Operations, (b) to the Individual who is the subject of the PHI, to that Individual's personal representative, or to another person or entity authorized by the Individual (c) to persons involved in that Individual's health care or payment for health care as provided by 45 C.F.R. § 164.510, (d) for notification for disaster relief purposes as provided by 45 C.F.R. § 164.510, (e) for national security or intelligence purposes, (f) to law enforcement officials or correctional institutions regarding inmates, (g) that are incident to a use or disclosure that is permitted by this Agreement or the ASO Agreement, or (h) as part of a limited data set in accordance with 45 C.F.R. § 164.514(e).
 - c. **Disclosure Tracking Time Periods.** Business Associate will have available for the Plan the Disclosure information required by this Section III.C.2 for the six (6) years immediately preceding the date of the Plan's request for the Disclosure information.

- d. **Provision of Disclosure Accounting.** Upon receipt of written notice (includes faxed and emailed notice) from the Plan, Business Associate will make available to the Plan, or at the Plan's direction to the Individual, the Disclosure information regarding the Individual, so the Plan may meet its disclosure accounting obligations under 45 C.F.R. § 164.528.

D. Confidential Communications

1. Business Associate will respond to an Individual's request for a confidential communication as part of Business Associate's normal customer service function, if the request is communicated to Business Associate directly by the Individual. Despite the fact that the request is not made to the Plan, Business Associate will respond to the request with respect to the PHI Business Associate and its subcontractors maintain in a manner and time frame consistent with requirements specified in the HIPAA Regulations. If an Individual's request, made to Business Associate, extends beyond information held by Business Associate or Business Associate's subcontractors, Business Associate will inform the Individual to direct the request to the Plan, so that Plan may coordinate the request. Business Associate assumes no obligation to coordinate any request for a confidential communication of PHI maintained by other business associates of Plan.
2. In addition, Business Associate will assist the Plan in responding to requests by Individuals that are made to the Plan to invoke a right of confidential communication under the HIPAA Regulations. Upon receipt of written notice (includes faxed and emailed notice) from the Plan, Business Associate will begin to send all communications of PHI directed to the Individual to the identified alternate address so that the Plan may meet its access obligations under 45 C.F.R. § 164.522(b).

E. Restrictions

1. Business Associate will respond to an Individual's request for a restriction as part of Business Associate's normal customer service function, if the request is communicated to Business Associate directly by the Individual. Despite the fact that the request is not made to the Plan, Business Associate will respond to the request with respect to the PHI Business Associate and its subcontractors maintain in a manner and time frame consistent with requirements specified in the HIPAA Regulations.
2. In addition, Business Associate will promptly, upon receipt of notice from Plan, restrict the use or disclosure of PHI, provided the Business Associate has agreed to such a restriction. Plan and Employer understand that Business Associate administers a variety of different complex health benefit arrangements, both insured and self-insured, and that Business Associate has limited capacity to agree to special privacy restrictions requested by Individuals. Accordingly, Plan and Employer agree that it will not commit Business Associate to any restriction on the use or disclosure of PHI for Treatment, Payment or Health Care Operations without Business Associate's prior written approval.

IV. Safeguard of PHI

- A. Business Associate will develop and maintain reasonable and appropriate administrative, technical and physical safeguards, as required by Social Security Act § 1173(d) and 45 C.F.R. § 164.530(a) and (c) and as required by the HIPAA Regulations, to ensure and to protect against reasonably anticipated threats or hazards to the security or integrity of health information, to protect against reasonably anticipated unauthorized use or disclosure of health information, and to reasonably safeguard PHI from any intentional or unintentional use or disclosure in violation of this Agreement.
- B. Business Associate will also develop and use appropriate administrative, physical and technical safeguards to preserve the Availability of electronic PHI, in addition to preserving the integrity and confidentiality of such PHI. The "appropriate safeguards" Business Associate uses in furtherance of 45 C.F.R. § 164.530(c), will also meet the requirements contemplated by 45 C.F.R. Parts 160, 162 and 164, as amended from time to time.

V. Compliance with Standard Transactions

Business Associate will comply with each applicable requirement for Standard Transactions established in 45 C.F.R. Part 162 when conducting all or any part of a Standard Transaction electronically for, on behalf of, or with the Plan.

VI. Inspection of Books and Records

Business Associate will make its internal practices, books, and records relating to its use and disclosure of PHI created or received for or from the Plan available to the U.S. Department of Health and Human Services to determine Plan's compliance with the HIPAA Regulations or this Agreement.

VII. Mitigation for Non-Permitted Use or Disclosure

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 the requirements of this Agreement.

VIII. Plan's Responsibilities

- A. **Preparation of Plan's Notice of Privacy Practices.** Plan shall be responsible for the preparation of its Notice of Privacy Practices ("NPP"). To facilitate this preparation, upon Plan's or Employer's request, Business Associate will provide Plan with its NPP that Plan may use as the basis for its own NPP. Plan will be solely responsible for the review and approval of the content of its NPP, including whether its content accurately reflects Plan's privacy policies and practices, as well as its compliance with the requirements of 45 C.F.R. § 164.520. Unless advance written approval is obtained from Business Associate, the Plan shall not create any NPP that imposes obligations on Business Associate that are in addition to or that are inconsistent with the NPP prepared by Business Associate or with the obligations assumed by Business Associate hereunder.
- B. **Distribution of Notice of Privacy Practice.** Plan shall bear full responsibility for distributing its own NPP as required by the HIPAA Regulations.

- C. **Changes to PHI.** Plan shall notify Business Associate of any change(s) in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such change(s) may affect Business Associate's use or disclosure of such PHI.
- D. **Minimum Necessary and Part 2.** Plan agrees to make commercially reasonable efforts to disclose only the minimum amount of PHI necessary, including such PHI that may be regulated under Part 2. Plan, to the extent that it operates as a Third Party Payer under Part 2, shall notify Business Associate of any information it transmits directly or indirectly to Business Associate that is subject to Part 2.

IX. Disclosure of PHI to the Plan, Employer and Other Business Associates

- A. The following provisions apply to disclosures of PHI to the Plan, Employer and other business associates of the Plan.
1. **Disclosure to Plan.** Unless otherwise provided by this Section IX, all communications of PHI by Business Associate shall be directed to the Plan.
 2. **Disclosure to Employer.** Business Associate may provide Summary Health Information regarding the Individuals in the Plan to Employer upon Employer's written request for the purpose either: (a) to obtain premium bids for providing health insurance coverage for the Plan, or (b) to modify, amend or terminate the Plan. Business Associate may provide information to Employer on whether an Individual is participating in the Plan or is enrolled in or has disenrolled from any insurance coverage offered by the Plan.
 3. **Disclosure to Other Business Associates and Subcontractors.** Business Associate may disclose PHI to other entities or business associates of the Plan if the Plan authorizes Business Associate in writing to disclose PHI to such entity or business associate. The Plan shall be solely responsible for ensuring that any contractual relationships with these entities or business associates and subcontractors comply with the requirements of 45 C.F.R. § 164.504(e) and § 164.504(f).

X. Miscellaneous

- A. **Agreement Term.** This Agreement will continue in full force and effect for as long as the ASO Agreement remains in full force and effect. This Agreement will terminate upon the cancellation, termination, expiration or other conclusion of the ASO Agreement.
- B. **Automatic Amendment to Conform to Applicable Law.** Upon the effective date of any final regulation or amendment to final regulations with respect to PHI, Standard Transactions, the security of health information or other aspects of the Health Insurance Portability and Accountability Act of 1996 applicable to this Agreement or to the ASO Agreement, this Agreement will automatically amend such that the obligations imposed on the Plan, Employer, and Business Associate remain in compliance with such regulations, unless Business Associate elects to terminate the ASO Agreement by providing Employer notice of termination in accordance with the ASO Agreement at least thirty (30) days before the effective date of such final regulation or amendment to final regulations.
- C. **Conflicts.** The provisions of this Agreement will override and control any conflicting provision of the ASO Agreement. All other provisions of the ASO Agreement remain unchanged by this Agreement and in full force and effect. This Agreement shall replace and supersede any prior business associate agreements executed between the parties relating to the ASO Agreement.
- D. **No Third Party Beneficiaries.** The parties agree that there are no intended third party beneficiaries under this Agreement. This provision shall survive cancellation, termination, expiration, or other conclusion of this Agreement and the ASO Agreement.
- E. **Interpretation.** Any ambiguity in this Agreement or the ASO Agreement or in operation of the Plan shall be resolved to maintain compliance with the HIPAA Regulations.
- F. **References.** References herein to statutes and regulations shall be deemed to be references to those statutes and regulations as amended or recodified.

On behalf of the group health plan and employer:

Group Health Plan/Employer:

Name:

Signature:

Title:

Date:

On behalf of the business associate:

Name of business associate:

Name:

Signature:

Title:

Date: