



BUSINESS ASSOCIATE AGREEMENT

Option A: To be used for Business Associates Relationships involving Health Plans

This Agreement is entered into on this _____ day of _____, 200__, by and between Larimer County on behalf of _____, the designated health care component, ("Covered Entity") and _____ ("Business Associate").

Option B: To be used for Business Associate relationships involving Health Care Providers or Health Care Clearinghouses

This Agreement is entered into on this _____ day of _____, 200__, by between _____ ("Covered Entity") and _____ ("Business Associate").

NOTE: When an existing contract for services between the Covered Entity and the Business Associate is already in effect, the word "Addendum" should replace the word "Agreement" throughout this document and the following phrase should be added immediately after ("Business Associate") in the opening paragraph: . . . as a part of the Contract between Covered Entity and Business Associate dated _____ ("Service Contract").

WHEREAS, by virtue of the services that Business Associate performs for the Covered Entity, Business Associate is a "business associate," as that term is defined at 45 CFR §160.103; and

WHEREAS, in connection with Business Associate's provision of services Covered Entity may disclose to Business Associate Protected Health Information ("PHI") (defined below); and

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate pursuant to this Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services and other applicable laws, as amended; and

WHEREAS, As part of the HIPAA Regulations, the HIPAA Privacy Rule ("Privacy Rule") (defined below) requires Covered Entity to enter into a contract containing specific requirements with Business Associate prior to the disclosure of HI, as set forth in, but not limited to, Title 45, Sections 160.103, 164.502(e) and 164.504 (e) of the Code of Federal Regulations ("CFR") and contained in this Agreement.

NOW, THEREFORE, it is agreed as follows:

1. Definitions.

(a) Except as otherwise defined herein, capitalized terms in this Agreement shall have the definitions set forth in the HIPAA Privacy Rule. In the event of any conflict between the mandatory provisions of the Privacy Rule and the provisions of this Agreement, the Privacy Rule shall control. Where the provisions of this Agreement differ from those mandated by the Privacy Rule, but are nonetheless permitted by the Privacy Rule, the provisions of this Agreement shall control.

(b) "Privacy Rule" shall mean the Standards for Privacy of Individual Identifiable Health Information as set forth at 45 CFR Part 160 and 164 Subparts A and E.

(c) "Protected Health Information (PHI)" 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 Covered Entity.

2. Obligations and Activities of Business Associate Regarding PHI.

(a) Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as required by Law.

(b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.

(c) Business Associate agrees to report to Covered Entity, as soon as reasonably practicable, any use or disclosure of PHI not provided for by this Agreement.

(d) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(e) Business Associate agrees to provide access, at the request of Covered Entity, and in a reasonable time and manner as designed by Covered Entity or, as directed by Covered Entity, to an Individual in order meet the requirements under 45 CFR §164.524.

(f) Business Associate agrees to make any amendment to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45

CFR §164.526 at the request of Covered Entity or an Individual, and in a reasonable time and manner as designated by Covered Entity.

(g) Business Associate agrees to make internal practices books, and records relating to the use and disclosure of PHI available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a reasonable time and manner as designated by the Covered Entity or Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule. Business Associate shall immediately notify Covered Entity upon receipt or notice of any request by the Secretary to conduct an investigation with respect to PHI received from the Covered Entity.

(h) Business Associate agrees to document any disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.

(i) Business Associate agrees to provide to Covered Entity or an Individual, in a time and manner designated by Covered Entity, information collected in accordance with paragraph (h) above, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.

(j) Business Associate agrees to use or disclose PHI pursuant to the request of Covered Entity; provided, however, that Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

(k) Business Associate agrees that it shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure in accordance with 45 CFR §§164.502(b) and 164.514(d).

3. Permitted Uses and Disclosures of Protected Health Information by Business Associate.

Option A: To be used where there is no existing contract or agreement for services between the Covered Entity and the Business Associate

(a) Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on behalf of, or to provide services to, Covered Entity for the following purposes, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

[LIST PURPOSES }

Option B to be used where there is an existing contract or agreement for services between the Covered Entity and the Business Associate

(a) Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform the functions, activities, or services for, or on behalf of, Covered Entity as previously agreed to by the parties in the Service Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by the Covered Entity.

(b) Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate to carry out the legal responsibilities of the Business Associate.

(c) Except as otherwise limited in this Agreement, Business Associate may disclose PHI if such disclosure is (i) Required by Law, or (ii) for its proper management and administration if Business Associate obtains reasonable assurances from the person to whom the information is disclosed that such information will remain confidential and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person agrees to notify Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

(d) Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B).

(e) Business Associate may use PHI to report violations of law to appropriate federal and state authorities consistent with 45 CFR §164.502(j)(1).

4. Obligations of Covered Entity Regarding PHI.

(a) Covered Entity shall provide Business Associate with the Notice of Information Practices that Covered Entity produces in accordance with 45 CFR §164.520, as well as any changes to such notice.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, authorization by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and discloses.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522.

(d) Covered Entity and its representatives shall be entitled on ten (10) business days prior written notice to Business Associate, to audit Business Associate from time-to-time but no more often than on a semi-annual basis to

verify Business Associate's compliance with the terms of this Agreement. Covered Entity shall be entitled and enabled to inspect the records and other information relevant to Business Associate's compliance with the terms of this Agreement. Covered Entity shall conduct its review during the normal business hours of Business Associate, as the case may be, and to the extent feasible without unreasonably interfering with such entity's normal operations, and shall be responsible for any costs associated with the audit process.

5. Amendment.

The parties agree to take any action necessary to amend the Agreement from time to time as is necessary for them to comply with the requirements of HIPAA and the regulations promulgated thereunder. The parties may agree to amend this Agreement from time to time in any other respect that they deem appropriate. This Agreement shall not be amended except by written instrument executed by Covered Entity and Business Associate.

6. Term and Termination.

Option A: To be used where there is no existing contract or agreement for services between the Covered Entity and the Business Associate

(a) *Term.* This Agreement shall be effective as of _____ and shall terminate on _____ unless earlier terminated as provided for in this agreement.

Option B: To be used where there is an existing contract or agreement for services between the Covered Entity and the Business Associate

(a) *Term.* This Agreement shall be effective as of _____ and shall terminate when the Services Agreement terminates unless earlier terminated as provided for in this agreement.

(b) *Termination for Cause.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach. If Business Associate does not cure the breach within 30 days of the date that Covered Entity provides notice of such breach to Business Associate, Covered Entity shall have the right to terminate this Agreement, *[the Service Agreement, or both of them,]* by providing 30 days advance written notice of such termination to Business Associate.

Covered Entity may terminate the Agreement without penalty or recourse to Covered Entity if Covered Entity determines that Business Associate has violated a material term of the Agreement.

Upon Business Associate's knowledge of a material breach by Covered Entity, for example, if Covered Entity makes illegal demands on Business Associate, Business Associate shall provide an opportunity for Covered Entity to cure the breach. If Covered Entity does not cure the breach within 30 days of the date that Business Associate provides notice of such breach to Covered Entity, Business Associate shall have the right to terminate this Agreement, *[the Services Agreement, or both of them,]* by providing 30 days advance written notice of such termination to Covered Entity.

(c) *Effect of Termination.*

(1) Except as provided in subparagraph (2) next below, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(2) If Business Associate determines that returning or destroying the PHI is infeasible (including the imposition upon Business Associate of an undue financial burden), Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

(3) The respective rights and obligations of Business Associate under this paragraph (c) shall survive the termination of this Agreement.

7. Indemnification.

Business Associate shall indemnify and hold harmless Covered Entity from and against any and all costs, expenses, claims, demands, causes of action, damages, attorneys' fees and judgments that arise out of or that may be imposed upon, incurred by, or brought against Covered Entity as a result of a breach of this Agreement or any violation of the Administrative Simplification Subtitle of HIPAA by Business Associate.

Covered Entity shall indemnify and hold harmless Business Associate from and against any and all costs, expenses, claims, demands, causes of action, damages, attorneys' fees and judgments that arise out of or that may be imposed upon, incurred by, or brought against Business Associate as a result of a breach of this

Agreement or any violation of the Administrative Simplification Subtitle of HIPAA by Covered Entity.

The indemnification obligations provided for in this Section will commence on the effective date of this Agreement and will survive its termination.

Nothing in this Agreement shall be deemed a waiver of any immunities, rights, benefits or protections that may be available to either party under the Colorado Governmental Immunity Act.

8. Notices.

All notices, requests, consents and other communications hereunder will be in writing, will be addressed to the receiving party's address set forth below or to such other address as a party may designate by notice hereunder, and will be either (i) delivered by hand, (ii) made facsimile transmission, (iii) sent by overnight courier, or (iv) sent by registered mail or certified mail, return receipt requested, postage prepaid.

If to the Covered Entity:

Organization Name: _____
 To the Attention of: _____
 Address: _____

 Facsimile: _____

If to the Business Associate:

Organization Name: _____
 To the Attention of: _____
 Address: _____

 Facsimile: _____

9. Severability.

The parties intend this Agreement to be enforced as written. However, (i) if any portion or provision of this Agreement will to any extent be declared illegal or unenforceable by a duly authorized court having jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, will not be

affected thereby, and each portion and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law; and (ii) if any provision, or part thereof, is held to be unenforceable because of the duration of such provision, the Covered Entity and the Business Associate agree that the court making such determination will have the power to reduce the duration of such provision, and/or to delete specific words and phrases, and in its reduced form such provision will then be enforceable and will be enforced.

10. Headings and Captions.

The headings and captions of the various subdivisions of the Agreement are for convenience of reference only and will in no way modify, or affect the meaning or construction of any of the terms or provisions hereof.

11. No Waiver of Rights, Powers and Remedies.

No failure or delay by a party hereto in exercising any right, power or remedy under this Agreement, and no course of dealing between the parties hereto, will operate as a waiver of any such right, power or remedy of the party. The election of any remedy by a party hereto will not constitute a waiver of the right of such party to pursue other available remedies. The terms and provisions of this Agreement may be waived, or consent for the departure therefrom granted, only by written document executed by the party entitled to the benefits of such terms or provisions. No such waiver or consent will be deemed to be or will constitute a waiver or consent with respect to any other terms or provisions of this Agreement, whether or not similar. Each such waiver or consent will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver or consent.

12. Regulatory References.

A reference in this Agreement to a section in the Privacy Rule means the referenced section or its successor, and for which compliance is required.

13. Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the State of Colorado.

14. Entire Agreement.

This Agreement sets forth the entire understanding of the parties with respect to the subject matter set forth herein and supersedes all prior agreements, arrangements and communications, whether oral or written, pertaining to the subject matter hereof.

15. Interpretation.

Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA and the regulations promulgated thereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first written above.

Business Associate

By: _____

Title: _____

Covered Entity

By: _____

Title: _____