

## **BUSINESS ASSOCIATE AGREEMENT**

**THIS BUSINESS ASSOCIATE AGREEMENT** ("Agreement") is entered into to be effective \_\_\_\_\_, 20\_\_\_\_\_, by and between US Health and Life Insurance Company and the group health plan(s) sponsored by it (referred to individually and collectively as "Covered Entity") and \_\_\_\_\_ (referred to as "Business Associate").

**(Please insert only an individual's name - OR - the name of the corporation or LLC, not both.)**

### **RECITALS**

Covered Entity will make available and/or transfer to Business Associate certain Protected Health Information ("PHI") that is confidential and must be afforded special treatment and protection pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") of 1996, and its implementing regulations, the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Rule") and the Security Standards for Protection of Electronic Health Information (the "Security Rule"), set forth in 45 CFR §§ 160-164.

Business Associate will have access to and/or receive from Covered Entity certain PHI or ePHI that can be used or disclosed only in accordance with this Agreement and the Privacy Rule and the Security Rule.

Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI and ePHI disclosed to Business Associate pursuant to this Agreement in compliance with HIPAA, the Privacy Rule, the Security Rule, and other applicable laws.

As part of the Privacy Rule and the Security Rule, Covered Entity must enter into a contract with Business Associate containing specific requirements as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("CFR") and contained in this Agreement, prior to the disclosure of PHI.

**NOW, THEREFORE**, Covered Entity and Business Associate agree as follows:

### **ARTICLE I. Definitions**

1.1. Meaning of Terms. The following terms shall have the meaning ascribed to them in this Section:

- (a) **BUSINESS ASSOCIATE** shall mean Automated Benefit Services, Inc.
- (b) **COVERED ENTITY** shall mean the group health plans sponsored from time to time by the entity listed above.
- (c) **DESIGNATED RECORD SET** shall mean a group of records maintained by or for Covered Entity that is: (a) the medical records and billing records about Individuals; or (b) used in whole or in part, by or for Covered Entity to make decisions about individuals. For these purposes, the term record means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for Covered Entity.
- (d) **ELECTRONIC HEALTH RECORD ("EHR")** means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.
- (e) **ELECTRONIC PROTECTED HEALTH INFORMATION ("ePHI")** shall have the same meaning as the term "electronic protected health information" in 45 CFR §160.103,

limited to the information created or received by Business Associate from or on behalf of Covered Entity.

- (f) **HEALTH CARE OPERATIONS** shall have the same meaning given to such term in the Privacy Rule, including, but not limited to, 45 CFR § 164.501.
- (g) **HHS** shall mean the United States Department of Health and Human Services.
- (h) **INDIVIDUAL** shall mean the person who is the subject of the PHI, and shall have the same meaning as the term "individual" as defined in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- (i) **PARTIES** shall mean Business Associate and Covered Entity.
- (j) **PRIVACY RULE** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR § 160 and § 164, Subparts A and E.
- (k) **PROTECTED HEALTH INFORMATION ("PHI")** shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. PHI shall also include ePHI.
- (l) **REQUIRED BY LAW** shall have the same meaning as the term "required by law" in 45 CFR § 164.103.
- (m) **SECRETARY** shall mean the Secretary of the Department of Health and Human Services ("HHS") or his or her designee.
- (n) **SECURITY RULE** shall mean the Security Standards for Protection of Electronic Health Information at 45 CFR § 160 and 164, Subparts A and C.

1.2. Other Terms. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103, 164.103, and 164.501. Any reference to a regulation or section in the Code of Federal Regulations ("CFR") shall include any corresponding regulation subsequently issued regardless of the date of issue.

## **ARTICLE II General Terms**

2.1. Interpretation of Provisions. In the event of an inconsistency between the provisions of this Agreement and the mandatory terms of the Privacy Rule or the Security Rule (as may be expressly amended from time to time by the HHS or as a result of final interpretations by HHS, an applicable court, or another applicable regulatory agency with authority over the Parties), the Privacy Rule or Security Rule shall prevail.

2.2. Provisions Permitted by Privacy Rule or Security Rule. Where provisions of this Agreement are different from those mandated by the Privacy Rule or Security Rule, but are nonetheless permitted by the Privacy Rule or Security Rule, the provisions of the Agreement shall control.

## **ARTICLE III. Obligations and Activities of Business Associate**

3.1. Limits on Use and Disclosure. Business Associate agrees to not use or further disclose PHI

other than as permitted or required by this Agreement or as Required By Law. Further, Business Associate shall use and disclose PHI in accordance with Covered Entity's Notice of Privacy Practices as provided by Covered Entity to Business Associate pursuant to Section 6.1. *Effective February 17, 2010*, Business Associate agrees to only use and disclose PHI obtained pursuant to this Agreement only if such use or disclosure is in compliance with each applicable requirement of 45 CFR § 164.504(e).

3.2. Safeguards. Business Associate agrees to use reasonable and appropriate administrative, physical and technological safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement. Business Associate represents and warrants that it has implemented, and during the term of this Agreement shall maintain, comprehensive written privacy and security policies and procedures and the necessary administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities.

3.3. Mitigation of Harm. 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 or the Privacy Rule or Security Rule.

3.4. Report of Improper Use or Disclosure. Business Associate agrees promptly to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which Business Associate becomes aware, including breaches of unsecured protected health information as required by 45 CFR § 164.410, and any security incident of which it becomes aware. Such report shall be in writing and shall be reported to Covered Entity as soon as practicable after the date Business Associate becomes aware of such use or disclosure, but in no event more than five (5) days following such date.

3.5. Agents and Subcontractors. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or received by Business Associate on behalf of, Covered Entity, agrees in writing to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to PHI. Business Associate shall implement and maintain appropriate sanctions against agents and subcontractors that violate such restrictions.

3.6. Availability of Internal Practices, Books and Records. Business Associate shall make internal practices, books, and records relating to the use and disclosure of PHI received from, or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of Covered Entity to the Secretary, in a time and manner designated by Covered Entity or the Secretary, for purposes of determining Covered Entity's compliance with the Privacy Rule or Security Rule. Business Associate shall notify Covered Entity, in writing, of any request by the Secretary under this Section, and shall provide Covered Entity with a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary. All costs incurred by Business Associate by providing any access or copies pursuant to this Section shall be borne by Covered Entity.

3.7. Access to Records. Business Associate shall provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual, in order to meet the requirements under 45 CFR § 164.524 with regard to providing an Individual with a right to access the Individual's PHI.

3.8. Amendments to PHI. Business Associate agrees in the time and manner designated by Covered Entity to make PHI contained in a Designated Record Set available for any amendments that Covered Entity agrees to make pursuant to 45 CFR § 164.526 or to otherwise allow Covered Entity to comply with its obligations under 45 CFR § 164.526. If any Individual requests an amendment of PHI, or a record about the Individual, contained in a designated Record Set directly from Business Associate or its agents or subcontractors, Business Associate shall notify Covered Entity in writing within five (5) days of the request. Covered Entity shall have sole authority and responsibility to approve or deny such a request, and shall notify Business Associate, in writing, of its decision to approve or deny any such

request.

3.9. Documentation of Disclosures. Business Associate shall document such 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. Such documentation shall be kept with regard to all disclosures of PHI except the following:

- (a) to carry out treatment, payment, and health care operations as provided in 45 CFR § 164.506;
- (b) to Individuals of PHI about them as provided in 45 CFR § 164.502;
- (c) incident to a use or disclosure otherwise permitted or required by the Privacy Rule, as provided by 45 CFR § 164.502;
- (d) pursuant to an authorization by an Individual as provided in 45 CFR § 164.508;
- (e) for Covered Entity's facility directory or to persons involved in an Individual's care or other notification purposes as provided in 45 CFR § 164.510;
- (f) for national security or intelligence purposes as provided in 45 CFR § 164.512(k)(2);
- (g) to correctional institutions or law enforcement officials as provided in 45 CFR § 164.512(k)(5);
- (h) as part of a limited data set in accordance with 45 CFR § 164.514(e); or
- (i) that occurred prior to April 14, 2003.

For each such disclosure, Business Associate shall document the following information:

- (i) the date of the disclosure;
- (ii) the name of the entity or person who received the PHI and, if known, the address of such entity or person;
- (iii) a brief description of the PHI disclosed; and
- (iv) a brief statement of the purpose of the disclosure that reasonably states the basis for the disclosure.

3.10. Documentation of Disclosures of PHI in an Electronic Health Record. If the Business Associate acquired PHI in an EHR as of January 1, 2009, this subsection applies to disclosures made on and after January 1, 2014 or such later date as prescribed by the Secretary. If the Business Associate acquired PHI in an EHR after January 1, 2009, this subsection applies to disclosures made on or after the later of January 1, 2011 or such later date as prescribed by the Secretary or the date the Business Associate acquires the EHR. To the extent the Business Associate uses or maintains an electronic health record with respect to protected health information, an individual has the right to receive an accounting of disclosures of such electronic health records made by the Business Associate in the three (3) years prior to the date on which the accounting is requested, including:

- (a) to carry out treatment, payment and health care operations as provided in 45 CFR § 164.506;
- (b) any disclosures not permitted by the Privacy Regulations or these Policies;
- (c) any disclosures the Business Associate makes pursuant to a "public policy" purpose as set forth in these Policies;
- (d) any disclosures required by law; and
- (e) any disclosures made pursuant to an administrative or judicial order, subpoena, discovery request, QMCSO, or workers' compensation program.

The Business Associate shall comply with the regulations detailing the information to be collected about each disclosure of PHI in an EHR scheduled to be issued by the Secretary of the Department of Health and Human Services no later than six (6) months after the Secretary adopts standards on accounting for disclosures.

3.11. Availability of Information to Respond to Request. Business Associate shall provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with Section 3.7 of this Agreement, 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. In the event that a request for an accounting is delivered directly to Business Associate or its agent or subcontractor by an Individual or a party other than Covered Entity, Business Associate shall within five (5) days of such request forward it to Covered Entity in writing. Business Associate shall, unless otherwise directed by Covered Entity or as Required By Law, supply an accounting of disclosures of PHI only to Covered Entity.

3.12. Covered Entity's Obligations. To the extent the Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR 45 CFR § 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

3.13. Security Policies and Procedures of Covered Entity. Business Associate agrees to comply with all security policies and procedures of Covered Entity regarding the use and disclosure of PHI. Covered Entity shall provide copies of all such security policies and procedures regarding the use and disclosure of PHI to Business Associate.

3.14. Disclosure of Minimum PHI. Business Associate agrees that it shall request, use and/or disclose only the amount and content of PHI necessary to meet the requirements of the Business Associate's obligations to the Covered Entity.

- (a) *Effective February 17, 2010*, Business Associate agrees to limit the use, disclosure, or request of protected health information, to the extent practicable, to the limited data set (as defined in 45 CFR § 164.514(e)(2)) or, if needed by the Business Associate, to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request.
- (b) Regulations defining "minimum necessary" are scheduled to be issued by the Secretary of the Department of Health and Human Services on or about August 17, 2010. *Upon the effective date of such regulations*, the Business Associate agrees to limit the use, disclosure, or request of protected health information to the minimum necessary, as defined by the regulations, to accomplish the intended purpose of the use, disclosure, or request.

3.15. Training. Business Associate shall provide appropriate training to its workforce in security, privacy, and confidentiality issues and regulations relating to PHI.

3.16. Response to Subpoena. Business Associate shall promptly notify Covered Entity if it receives a subpoena or other legal process seeking the disclosure of PHI.

3.17. Notification of Claims. Business Associate shall promptly notify Covered Entity upon notification or receipt of any civil or criminal claims, demands, causes of action, lawsuits, or governmental enforcement actions arising out of or related to this Agreement or the PHI, regardless of whether Covered Entity and/or Business Associate are named as parties in such claims, demands, causes of action, lawsuits, or enforcement actions.

3.18. Protection of ePHI & Compliance with Security Standards. Business Associate shall appropriately safeguard ePHI of the Covered Entity as follows:

- (a) Business Associate shall implement administrative, physical, and technical safeguards

that reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI it creates, receives, maintains, or transmits on behalf of Covered Entity, to prevent use or disclosure of the information other than as provided for by this contract;

- (b) Business Associate shall ensure that any agent, including a subcontractor, to whom it provides ePHI of the Covered Entity agrees to implement reasonable and appropriate safeguards to protect such information, to prevent use or disclosure of the information other than as provided for by this contract;
- (c) Business Associate shall report to Covered Entity any security incident of which it becomes aware; and
- (d) Business Associate hereby authorizes termination of its underlying contract by Covered Entity if Covered Entity determines that Business Associate has violated a material term of this Agreement.

3.19. Administrative, Physical, and Technical Safeguards. *Effective on or before February 17, 2010*, Business Associate shall implement the administrative, physical, and technical safeguards under 45 CFR §§ 164.308, 164.310, and 164.312, respectively, in accordance with 45 CFR § 164.306.

3.20. Policies and Procedures and Documentation Requirements. *Effective on or before February 17, 2010*, Business Associate shall comply with the policies and procedures and documentation standards and implementation specifications under 45 CFR § 164.316, in accordance with 45 CFR § 164.306.

3.21. Notification of Breach of Unsecured PHI. Upon any breach, Business Associate shall evaluate whether such breach is a "Breach" requiring notice under HIPAA's Privacy Rule or Security Standards. Following Business Associate's discovery of a Breach of Unsecured Protected Health Information (Unsecured PHI) in Business Associate's control, as both terms are defined in 45 CFR § 164.402, Business Associate shall:

- (a) notify Covered Entity of such Breach as soon as practicable in accordance with 45 CFR § 164.410;
- (b) on behalf of Covered Entity, notify each individual whose Unsecured PHI has been, or is reasonably believed by the Covered Entity to have been, Breached, of such Breach in accordance with 45 CFR § 164.404;
- (c) on behalf of Covered Entity, provide any notice to the media that is required in accordance with 45 CFR § 164.406; and
- (d) on behalf of Covered Entity, provide any notice to the Secretary of the Department of Health and Human Services that is required in accordance with 45 CFR § 164.408.

Breaches shall be treated as discovered by Business Associate in accordance with 45 CFR § 164.410(a)(2). Any notices to be provided by Business Associate, on behalf of Covered Entity, under this Section 3.15, shall be subject to the approval of Covered Entity, which approval shall not unreasonably be withheld. The notice obligations of Business Associate under this Section shall be effective for Breaches occurring on and after September 23, 2009.

3.22. State Law Breach Notification Requirements. Upon any breach, Business Associate shall evaluate whether such breach is a breach requiring notice under any state laws. If Business Associate determines that such breach requires notices to be provided under any state laws, Business Associate

shall be responsible for providing such notices in accordance with the applicable state laws.

3.23. Material Breach or Violation of Business Associate's Obligations. *Effective February 17, 2010*, if the Business Associate knows of a pattern of activity or practice of the Covered Entity that constitutes a material breach or violation of an obligation of the Covered Entity under this Agreement, the Business Associate must take reasonable steps to cure the breach or end the violation. If such steps are unsuccessful, the Business Associate shall terminate this Agreement or, if termination is not feasible, report the problem to the Secretary of the Department of Health and Human Services.

#### **ARTICLE IV. Permitted Uses and Disclosures by Business Associate**

4.1. Use or Disclosure to Perform Functions, Activities, or Services. Business Associate may use or disclose PHI to perform those functions, activities, or services that Business Associate is required to perform for, or on behalf of, Covered Entity, provided that such use or disclosure would not violate the Privacy Rule or the Security Rule if done by Covered Entity. The Business Associate shall use or disclose PHI: in maintaining the claims processing database; and to perform any other function requested by Covered Entity and consistent with applicable laws including, but not limited to, the Privacy Rule and the Security Rule. Any such use or disclosure shall be limited to those reasons and those individuals as necessary to meet the Business Associate's obligations. In all circumstances, Business Associate shall limit such uses and disclosures to the minimum amount of PHI that is necessary to fulfill those obligations.

4.2. Disclosures to Workforce. Business Associate shall not disclose PHI to any member of its workforce unless necessary to fulfill a purpose described in Section 4.1 and unless Business Associate has advised such person of Business Associate's obligations under this Agreement and of the consequences for such person and for the Business Associate of violating this Agreement. Business Associate shall take appropriate disciplinary action against any member of its workforce who uses or discloses PHI in contravention of this Agreement or the Privacy Rule or the Security Rule.

4.3. Appropriate Uses of PHI. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

4.4. Appropriate Disclosures of PHI; Confidentiality Assurances and Notification. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

#### **ARTICLE V. Indemnification, Insurance, and Additional Damages**

5.1. Indemnification. Business Associate shall indemnify and hold harmless Covered Entity against, and reimburse Covered Entity for, any expense, loss, damages, legal fees, or costs arising out of or related to any civil or criminal claims, demands, causes of action, lawsuits, or governmental enforcement actions, whether brought by a third party, arising out of or related to Business Associate's acts and omissions associated with Business Associate's obligations under this Agreement or its use or disclosure of PHI, unless Business Associate was following the instructions of or requirements of the Covered Entity. Such indemnification shall include, but not be limited to, the payment of all reasonable attorneys fees associated with any claim, demand, action, cause of action, or lawsuit arising out of or relating to such acts or omissions.

## ARTICLE VI. Obligations of Covered Entity

6.1. Notice of Privacy Practices. Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.

6.2. Change or Revocation of Permission. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures. Business Associate shall comply with any such changes or revocations.

6.3. Restrictions on Use or Disclosure. 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. *Effective February 17, 2010*, notwithstanding the paragraph (a)(1)(ii) of 45 CFR 164.522, the Business Associate must comply with the requested restriction if (1) except as otherwise required by law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and (2) the protected health information pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full.

6.4. No Request to Use or Disclose in Impermissible Manner. Except as necessary for the management and administrative activities of the Business Associate as allowed in Sections 4.3 and 4.4, Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule or the Security Rule if done by Covered Entity.

## ARTICLE VII. Term and Termination

7.1. Term. The Term of this Agreement shall be effective as of the date established by the Secretary for Covered Entity to comply with the Privacy Rule and Security Rule, and shall terminate when all PHI provided by Covered Entity to Business Associate, or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

7.2. Termination with 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 or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within a time period to be determined by Covered Entity after considering the nature and scope of the breach, or immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible. If termination of this Agreement is not feasible, Covered Entity shall report the breach to the Secretary.

7.3. Judicial or Administrative Proceedings. Either party may terminate this Agreement by written notice to the other party, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA, the Privacy Rule, the Security Rule, or other security or privacy laws, or (ii) a finding or stipulation that the other party has violated any standard or requirement of HIPAA, the Privacy Rule, the Security Rule, or any other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

7.4. Changes in Law. In the event of passage of a law or promulgation of a regulation or an action or investigation by any regulatory body which would prohibit the relationship between the Parties, or the operations of either party with regard to the subject of this Agreement, the Parties shall attempt in good faith to renegotiate the Agreement to delete the unlawful provision(s) so that the Agreement can continue. If the Parties are unable to renegotiate the Agreement within thirty (30) days, the Agreement



shall terminate immediately, upon written notice of either party.

7.5. Effect of Termination.

- (a) Except as provided in paragraph (b) of this Section 7.5, upon termination of this Agreement for any reason, Business Associate shall return or destroy (at Covered Entity's election) all PHI received from Covered Entity, or received by Business Associate on behalf of Covered Entity. 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. If Business Associate is directed to destroy the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.
- (b) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon Covered Entity's approval, which shall not be unreasonably withheld, Business Associate may retain the PHI, but shall extend the protections of this Agreement (including, but not limited to, Articles 1, II, III, IV, and V) 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.

**ARTICLE VIII. Miscellaneous**

8.1. Assignment. This Agreement shall be binding upon and inure to the benefit of the respective legal successors of the Parties. Neither this Agreement nor any rights or obligations hereunder may be assigned, in whole or in part, without the prior written consent of the other party.

8.2. Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to Covered Entity to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers, or employees based upon a claimed violation of HIPAA, the Privacy Rule, the Security Rule or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee, or agent is named as an adverse party.

8.3. Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA, the Privacy Rule, or the Security Rule will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

8.4. Property Rights. All PHI shall be and remain the exclusive property of Covered Entity. Business Associate agrees that it acquires no title or rights to the PHI, including any de-identified information, as a result of this Agreement.

8.5. Liability Limitations/Exclusions. Any limitations on liabilities or exclusions from liability previously agreed upon shall not be applicable to breaches of this Agreement, HIPAA, the Privacy Rule or the Security Rule and other confidentiality and privacy requirements regarding PHI under this Agreement.

8.6. Right to Cure. Business Associate agrees that Covered Entity has the right, but not the obligation, to cure any and all breaches of Business Associate's privacy, security and confidentiality obligations under this Agreement. Any expenses or costs associated with Covered Entity's cure of

Business Associate's breach(es) shall be borne solely by Business Associate.

8.7. Injunctive Relief. Business Associate agrees that breach of the terms and conditions of this Agreement shall cause irreparable harm and there exists no adequate remedy of law. Covered Entity retains all rights to seek injunctive relief to prevent or stop any breach of the terms of this Agreement, including, but not limited to the unauthorized use or disclosure of PHI by Business Associate or any agent, contractor or third party that received PHI from Business Associate.

8.8. Survival. The respective rights and obligations of Business Associate under Articles I, II, III, IV, V, and VIII of this Agreement shall survive the termination of this Agreement.

8.9. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, Security Rule and HIPAA.

8.10. Regulatory References. A reference in this Agreement to a section in the Privacy Rule or the Security Rule or Security Rule means the section as in effect or as amended, and for which compliance is required.

8.11. Entire Agreement. This document, together with any written Schedules, amendments and addenda, constitute the entire agreement of the Parties and supersedes all prior oral and written agreements or understandings between them with respect to the matters provided for herein.

8.12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan to the extent that the provisions of HIPAA or the Privacy Rule or the Security Rule do not preempt the laws of the State of Michigan.

8.13. Modifications. Any modifications to this Agreement shall be valid only if made in writing and signed by a duly authorized agent of both Parties.

8.14. Notice. Any notice required or permitted to be given by either party under this Agreement shall be sufficient if in writing and hand delivered (including delivery by courier) or sent by postage prepaid certified mail return receipt requested, as follows:

If to Covered Entity	If to Business Associate:
US Health and Life Insurance Company Attn: Privacy Officer 8220 Irving Road Sterling Heights, MI 48312-4621	

8.15. Severability. The Parties agree that if a court determines, contrary to the intent of the Parties, that any of the provisions or terms of this Agreement are unreasonable or contrary to public policy, or invalid or unenforceable for any reason in fact, law, or equity, such unenforceability or validity shall not affect the enforceability or validity of the remaining provisions and terms of this Agreement. Should any particular provision of this Agreement be held unreasonable or unenforceable for any reason, then such provision shall be given effect and enforced to the fullest extent that would be reasonable and enforceable.

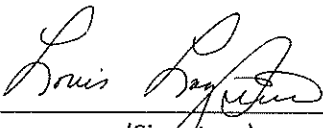
8.16. Waiver of Breach. No failure or delay by either party in exercising its rights under this Agreement shall operate as a waiver of such rights, and no waiver of any breach shall constitute a waiver of any prior, concurrent, or subsequent breach.

8.17. Titles. Titles or headings are used in this Agreement for reference only and shall not have any effect on the construction or legal effect of this Agreement.

8.18. Independent Contractors. For purposes of this Agreement, Covered entity and Business Associate are and will act at all times as independent contractors. None of the provisions of this Agreement are intended to create, nor shall be deemed or construed to create, any relationship other than that of independent entities contracting with each other for the purpose of effecting this Agreement. None of the provisions of this Agreement shall establish or be deemed or construed to establish any partnership, agency, employment agreement or joint venture between the Parties.

8.19. No Third Party Beneficiaries. It is the intent of the Parties that this Agreement is to be effective only in regards to their rights and obligations with respect to each other. It is expressly not the intent of the Parties to create any independent rights in any third party or to make any third-party beneficiary of this Agreement and no privity of contract shall exist between third parties and each party.

**Each party to this Agreement warrants that it has full power and authority to enter into this Agreement, and the person signing this Agreement on behalf of either party warrants that he/she has been duly authorized and empowered to enter into this Agreement.**

COVERED ENTITY	BUSINESS ASSOCIATE
<p>By:             _____            (Signature)              Louis Lapiana</p> <p>Title: President</p> <p>Date: _____</p>	<p>By: _____            (Signature)</p> <p>_____</p> <p>(Printed Name)</p> <p>Title: _____</p> <p>Date: _____</p>

**\*If this form is completed by an individual, no title is used, If the form is completed on behalf of a corporation or LLC then the signing individual will need to add his/her title.**