

**MEMORANDUM OF UNDERSTANDING
BETWEEN
BLUE CROSS OF CALIFORNIA PARTNERSHIP PLAN, INC. (“Anthem”)
AND
COUNTY OF TULARE
 (“County”)**

LIVEHEALTH ONLINE (LHO) KIOSK

This Memorandum of Understanding becomes effective as of _____ and can be terminated by either party with 30 days’ notice.

CATEGORY	TULARE COUNTY	ANTHEM
1. PURPOSE		Anthem will provide a LiveHealth Online (“LHO”) Branded Booth Kiosk that will be placed in the County office. The Kiosk provides onsite access points to the LiveHealth Online tool for Anthem Medi-Cal beneficiaries and other members of the community.
2. LIAISON	Responsible for appointing a Liaison to coordinate Activities with Anthem.	Identify a local Anthem Liaison to coordinate activities with the County.
3. LOCATION OF KIOSK	County will place Kiosk in a secure location that is protected from the weather and can be monitored against vandalism or someone going in for reasons other than LHO visits.	
4. STANDARD MAINTENANCE AND SUPPORT	<p>County will identify resources to assist with regular sanitation and cleaning of Kiosk.</p> <p>County will ensure Kiosk is cleaned and ready for visits.</p>	<p>Anthem will cover all technical maintenance and support of Kiosk.</p> <p>Maintenance Services specifically excludes support for any Errors caused by (i) operator error or use of the Kiosk in a manner not in accordance with the Documentation; (ii) any integration, modification, or repair of the Kiosk made by any person other than Supplier or approved contractor; (iii) unusual physical, electrical or electromagnetic stress, fluctuations in electrical power beyond Kiosk specifications, or</p>

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		failure of air conditioning or humidity control; and (iv) accident, misuse, or neglect or causes not attributable to normal wear and tear.
5. MEMBER ASSISTANCE	County and Anthem will develop a plan to address and assist any challenges encountered by members to be able to connect with a provider or for the registration process.	County and Anthem will develop to address and assist any challenges encountered by members to be able to connect with a provider or for the registration process.
6. MEMBER COMMUNICATION	County can distribute Anthem flyers to members with step by step process to access LiveHealth Online.	Anthem will communicate LiveHealth Online services to providers and members via multiple avenues.
7. EMERGENCY SITUATIONS	County will follow emergency protocols in place if a member is using the Kiosk and has a medical emergency.	
8. KIOSK MALFUNCTION	County and Anthem will develop a plan to address any Kiosk system malfunction.	County and Anthem will develop a plan to address any Kiosk system malfunction.
9. TERMINATION	County may terminate use of the Kiosk by notifying Anthem within 30 days of the date of termination.	Anthem may terminate use of the Kiosk by notifying County within 30 days of the date of termination. Removal of Kiosk will occur within the same timeframe.
10. IDEMNIFICATION	COUNTY must indemnify, defend, protect and hold harmless Anthem, its officers, directors, employees, agents, successors and assigns, (each an "Anthem Indemnified Party" and collectively, the "Anthem Indemnified Parties"), from and against all claims (including, without limitation, claims for bodily injury, death or damage	(a) To the fullest extent permitted by law, Anthem must indemnify, defend (at Anthem's sole cost and expense and with legal counsel approved by COUNTY, which approval may not be unreasonably withheld), protect and hold harmless COUNTY, all subsidiaries, divisions and affiliated agencies of COUNTY, and all of their

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	<p>to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional expert or consultants' fees and costs) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise out of, pertain to, or relate (directly or indirectly) to the negligence, recklessness, or misconduct of COUNTY with respect to COUNTY'S performance under this Agreement. COUNTY's obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an Anthem Indemnified Party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Anthem Indemnified Party, then COUNTY's indemnification obligation shall be reduced in proportion to the established comparative liability.</p>	<p>representatives, partners, designees, officers, directors, employees, consultants, agents, successors and assigns, (each, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional expert or consultants' fees and costs and COUNTY general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise out of, pertain to, or relate (directly or indirectly) to the negligence, recklessness, or misconduct of Anthem with respect to any work performed or services provided under this Agreement (including, without limitation, the acts, errors and/or omissions of Anthem, its principals, officers, agents, employees, vendors, suppliers, consultants, sub-consultants, contractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).</p>

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		<p>Anthem’s obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, then Anthem’s indemnification obligation shall be reduced in proportion to the established comparative liability.</p> <p>(b) The duty to defend is a separate and distinct obligation from Anthem’s duty to indemnify. Anthem shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the Indemnified Parties immediately upon tender to Anthem of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. Payment to Anthem by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party cannot be a condition precedent to enforcing the Indemnified Party's rights to indemnification under this Agreement. An allegation or determination that persons other than Anthem are responsible for the Claim does not relieve Anthem from its</p>

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		<p>separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Anthem asserts that liability is caused in whole or in part by the negligence or willful misconduct of an Indemnified Party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an Indemnified Party, then Anthem may submit a claim to the COUNTY for reimbursement of reasonable attorneys’ fees and defense costs in proportion to the established comparative liability of the Indemnified Party. Anthem’s indemnification obligations under this Agreement will survive the expiration or earlier termination of this Agreement until action against the Indemnified Parties for the matter indemnified is fully and finally barred by the applicable statute of limitations or statute of repose. Anthem’s liability for indemnification under this Agreement is in addition to any liability Anthem may have to COUNTY for a breach by Anthem of any of the provisions of this Agreement. Under no circumstances may the insurance requirements and limits set forth</p>

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		<p>in this Agreement be construed to limit Anthem's indemnification obligation or other liability under this Agreement. The terms of this Agreement are contractual and the result of negotiation between the Parties.</p> <p>(c) Anthem must indemnify and hold COUNTY harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses, for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by COUNTY, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.</p>
11. GOVERNING LAW	The laws of the State of California, without reference to California conflict of laws principles, govern this Agreement and its interpretation. The Parties agree that this Agreement is made in and will be performed in Tulare County, California.	The laws of the State of California, without reference to California conflict of laws principles, govern this Agreement and its interpretation. The Parties agree that this Agreement is made in and will be performed in Tulare County, California.
12. INSURANCE		Before approval of this Agreement by COUNTY, Anthem must file with the Clerk of the Board of Supervisors evidence of the required insurance as set forth in the attached Exhibit A .

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CATEGORY	TULARE COUNTY	ANTHEM
13. DISPUTE RESOLUTION	<p>Anthem and County agree to meet and confer in good faith to resolve any problems or disputes that may arise under this MOU. Anthem shall continue with its responsibilities under this Agreement during any dispute. If a dispute arises out of or relating to this Agreement, or the breach of the Agreement, and if the dispute cannot be settled through negotiation, then the Parties agree first to try in good faith to settle the dispute by non-binding mediation, to be held in Tulare County, California, before resorting to litigation or some other dispute resolution procedure, unless the Parties mutually agree otherwise. The Parties must mutually select the mediator, but in case of disagreement, then the Parties will select the mediator by lot from among two nominations provided by each Party. The Parties will split equally all costs and fees required by the mediator; otherwise each Party will bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, then either Party may pursue litigation to resolve the dispute.</p>	<p>Anthem and County agree to meet and confer in good faith to resolve any problems or disputes that may arise under this MOU. Anthem shall continue with its responsibilities under this Agreement during any dispute. If a dispute arises out of or relating to this Agreement, or the breach of the Agreement, and if the dispute cannot be settled through negotiation, then the Parties agree first to try in good faith to settle the dispute by non-binding mediation, to be held in Tulare County, California, before resorting to litigation or some other dispute resolution procedure, unless the Parties mutually agree otherwise. The Parties must mutually select the mediator, but in case of disagreement, then the Parties will select the mediator by lot from among two nominations provided by each Party. The Parties will split equally all costs and fees required by the mediator; otherwise each Party will bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, then either Party may pursue litigation to resolve the dispute.</p>

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**Blue Cross of California
Partnership Plan, Inc.**

Date: 10/11/19

By 
Print Name Barsam Kasravi, MD

Title President, Medicaid CA

Date: 9/26

By 
Print Name Cassie Kam

Title RVP Government Finance

[Pursuant to Corporations Code section 313, County policy requires that contracts with a **Corporation** be signed by both (1) the chairman of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having recordkeeping or financial responsibilities), unless the contract is accompanied by a certified copy of a resolution of the corporation's Board of Directors authorizing the execution of the contract. Similarly, pursuant to California Corporations Code section 17703.01, County policy requires that contracts with a **Limited Liability Company** be signed by at least two managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager.]

COUNTY OF TULARE

Date: _____

By _____
Chairman, Board of Supervisors

ATTEST: JASON T. BRITT
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By _____
Deputy Clerk

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Approved as to Form
County Counsel

By *Allen P. [Signature]* 10.8.19
Deputy
Matter # 2019758

EXHIBIT A

PROFESSIONAL SERVICES CONTRACTS INSURANCE REQUIREMENTS

CONTRACTOR shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees and subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

1. Coverage at least as broad as Commercial General Liability, insurance Services Office Commercial General Liability coverage occurrence form GC 00 01, with limits no less than \$1,000,000 per occurrence including products and completed operations, property damage, bodily injury and personal & advertising injury. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability of \$1,000,000 per occurrence including any auto or, if the CONTRACTOR has no owned autos, hired and non-owned auto coverage. If an annual aggregate applies it must be no less than \$2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions) insurance appropriate to the CONTRACTOR's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

B. Specific Provisions of the Certificate

1. If the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
2. CONTRACTOR must submit endorsements to the General Liability reflecting the following provisions:
 - a. *The COUNTY, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects; liability arising out of work or operations performed by, or on behalf of the CONTRACTOR including material, parts, or equipment furnished in connection with such work or operations.*
 - b. *For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.*
 - c. *CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of CONTRACTOR may acquire against the county by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.*

d. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled, except after written notice has been provided to the COUNTY.

3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONTRACTOR, its employees, agents and subcontractors. CONTRACTOR waives all rights against the COUNTY and its officers, agents, officials, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.

C. Deductibles and Self-Insured Retentions

Deductibles and Self-insured retentions must be declared and any deductible or self-insured retention that exceeds \$100,000 will be reviewed by the COUNTY Risk Manager for approval.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A-VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

E. Verification of Coverage

Prior to approval of this Agreement by the COUNTY, the CONTRACTOR shall file with the submitting department, certificates of insurance with original endorsements effecting coverage in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.

WAIVERS:

I represent and attest that I am a person authorized to make representations on behalf of the CONTRACTOR, and represent the following:

(mark X if applicable)

Automobile Exemption: I certify that _____ does not own nor use vehicles in the performance of the agreement for which this insurance requirement is attached.

Workers' Compensation Exemption: I certify that _____ is not required to carry workers' compensation coverage or has filed an exemption with the State of California as required by law.

I acknowledge and represent that we have met the insurance requirements listed above.

Print Name Barsam Kasravi, MD Date: 10/11/19

Contractor Name Anthem

Signature 

COUNTY OF TULARE
EXHIBIT B
TO HHSa SERVICES AGREEMENT
CULTURAL COMPETENCE AND DIVERSITY
(Form revision approved 01/01/2018)

ANTHEM is encouraged to support Tulare County Health and Human Services Agency ("HHSa") in the journey to work effectively across and among all cultures. It is the desire of HHSa that services be sensitive to the diversity of the community served, including but not limited to ethnic, linguistic, sexual and cultural characteristics. Sensitivity includes acceptance and respect for the cultural values, beliefs and practices of the community, as well as the ability to apply an understanding of the relationships of language and culture to the delivery of supports and services.

- Assure equal access for people with diverse cultural backgrounds and/or limited English proficiency. Limited English Proficiency includes literacy issues: those who cannot either read or write in any language.

ANTHEM and COUNTY agree that:

- **Cultural competence** is the integration and transformation of knowledge about individuals and groups of people into specific standards, policies, practices, and attitudes used in appropriate cultural settings to increase the quality of services, thereby producing better outcomes. Competence in cross-cultural functioning means learning new patterns of behavior and effectively applying them in appropriate settings.

ANTHEM will strive to:

- Ensure that agents, employees or officers providing services are sensitive to the ethnic, linguistic, sexual and cultural diversity of the community served. Sensitivity includes acceptance and respect for the cultural values, beliefs and practices of the community, as well as the ability to apply an understanding of the relationships of language and culture to the delivery of supports and services.

EXHIBIT C

HIPAA BUSINESS ASSOCIATE AGREEMENT (Form revision approved 4/18/18)

This Exhibit shall constitute the Business Associate Agreement (the "Exhibit") between SUBRECIPIENT, (the "Business Associate") and the HHS/TW (the "Covered Entity"), and applies to the functions Business Associate will perform on behalf of Covered Entity (collectively, "Services"), that are identified in the Agreement (as defined below).

Business Associate acknowledges and agrees that all Protected Health Information ("PHI") that is created or received by Covered Entity and disclosed or made available in any form, including but not limited to paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

1. Purpose. This Exhibit is intended to ensure that the Business Associate will establish and implement appropriate privacy and security safeguards with respect to PHI (as defined below) that the Business Associate may create, receive, use, or disclose in connection with the Services to be provided by the Business Associate to the Covered Entity. Such safeguards will be consistent with the standards set forth in regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") as amended by the Health Information Technology for Economic and Clinical Health Act as set forth in Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 ("HITECH Act") and amendments to include HIPAA's Administrative Simplification provisions.

2. Regulatory References. All references to regulatory Sections, Parts and Subparts in this Exhibit are to Title 45 of the Code of Federal Regulations, parts 160 and 164 (the "HIPAA Privacy Rule" and the "HIPAA Security Rule") as in effect or as amended, and for which compliance is required, unless otherwise specified.

3. Definitions. Unless otherwise defined in this Agreement, the terms used in this Agreement shall have the meanings ascribed in the HIPAA Regulations; provided that PHI shall mean Protected Health Information, as defined in 45 C.F.R. section 160.103, limited to the Protected Health Information Business Associate received from, created, or received on behalf of Covered Entity as its Business Associate.

4. Obligations and Activities of Business Associate.

Business Associate agrees to:

- a. Acknowledge that it is required by Sections 13401 and 13404 of the HITECH Act to comply with the HIPAA Security Rule, Sections 164.308 through 164.316, including the Security Rule's Administrative, Physical and Technical safeguard requirements and the use and disclosure provisions of the HIPAA Privacy Rule, Sections 164.502 and 164.504.
- b. Not use or further disclose PHI other than as permitted or required by this Exhibit, or as required by law.
 1. Use appropriate safeguards to maintain the security, including compliance with Subpart C of 45 CFR Part 164, with respect to electronic PHI, to prevent use or disclosure of the PHI other than as provided for by this Agreement. Appropriate safeguards shall include implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that is created, received, maintained or transmitted on behalf of the Covered Entity and limiting use and disclosure to applicable minimum necessary rules, regulations and statutes.
 2. To the extent practicable, Business Associate will secure all PHI by technological means that render such information unusable, unreadable, or indecipherable to unauthorized individuals and in accordance with any applicable standards or guidance issued by the Department of Health and Human Services under Section 13402 of the HITECH Act.
- c. Report breach disclosures immediately to Covered Entity. Business associate: 1) shall report to Covered Entity any use or disclosure of PHI not provided for by this Agreement on the first day the Business Associate knows or should have known about it; 2) notify the Covered Entity of any and all breaches of PHI, and provide detailed information to the Covered Entity about the

EXHIBIT C

HIPAA BUSINESS ASSOCIATE AGREEMENT (Form revision approved 4/18/18)

breach, along with the names and contact information, when available, of all individuals whose PHI was involved. **(See Section 6 of this Exhibit for further detail.)** 3) agrees that such notification will meet the requirements of Section 13402 of the HITECH Act and § 164.410 of the amended HIPAA regulations.

- d. Enter into a written agreement with any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, pursuant to which such agent or subcontractor agrees to be bound by the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2) if applicable. **(See Section 11 of this Exhibit for further detail.)**
- e. Make internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI available to the Covered Entity or to the Secretary of the United States Department of Health and Human Services ("Secretary"), for purposes of determining Business Associate's compliance with the HIPAA Privacy Rule and Security Rule. **(See Section 12 of this Exhibit for further detail.)**
 - 1. Business Associate shall concurrently provide to the Covered Entity a copy of any PHI that Business Associate provides to the Secretary.
- f. Maintain and make available the information required to provide an accounting of disclosures of PHI as would be required for Covered Entity to respond to a request by an individual for an account of disclosures of PHI in accordance with 45 CFR § 164.528.

5. Permitted Uses and Disclosures by Business Associate.

- a. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities consistent with Section 164.502(j).
Unless otherwise limited in this Exhibit, Business Associate may:
- b. Use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered

Entity as necessary to perform the services described in Exhibit A to the Agreement, or as otherwise specified in the Master Exhibit, subject to limiting use and disclosure to applicable minimum necessary rules, regulations and statutes and provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

- c. Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- d. Disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains the appropriate medical release from the person whose PHI is being disclosed and the person to whom the PHI is disclosed provides reasonable assurances in writing that the PHI 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 the 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 to Covered Entity as permitted by Section 164.504(e)(2)(i)(B).

6. Reporting Unauthorized Uses and Disclosures.

- a. Business Associate agrees to notify Covered Entity of any breach, or security incident involving PHI of which it becomes aware, including any access to, or use or disclosure of PHI not permitted by this Exhibit. Such notification will be made immediately after discovery and will include, to the extent possible, the identification of each individual whose PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed, a description of the PHI involved, the nature of the unauthorized access, use or disclosure, the date of occurrence, and a description of any remedial action taken or proposed to be taken by Business Associate. Business Associate will also provide to Covered Entity any other available

EXHIBIT C

HIPAA BUSINESS ASSOCIATE AGREEMENT (Form revision approved 4/18/18)

information that the Covered Entity is required to include in its notification to the individual under Section 164.404(c) at the time of the initial report or within three (3) days of the information becoming available.

- b. In the event of a request by law enforcement under Section 164.412, Business Associate may delay notifying Covered Entity for the applicable timeframe.
- c. A breach or unauthorized access, use, or disclosure shall be treated as discovered by the Business Associate on the first day on which such unauthorized access, use, or disclosure is known, or should reasonably have been known, to the Business Associate or to any person, other than the individual committing the unauthorized disclosure, that is an employee, officer, subcontractor, agent or other representative of the Business Associate.
- d. In meeting its obligations under this section, it is understood that Business Associate is not acting as the Covered Entity's agent. In performance of the work, duties, and obligations and in the exercise of the rights granted under this Exhibit, it is understood and agreed that Business Associate is at all times acting as an independent SUBRECIPIENT in providing services pursuant to this Exhibit and the Agreement.

7. Mitigation of Harmful Effects.

- a. Business Associate agrees to mitigate, to the greatest extent possible, any harm that results from the following actions: breach, security incident, or unauthorized access, use or disclosure of PHI by Business Associate or its employees, officers, subcontractors, agents, or other representatives.
- b. Following the actions listed in Section 7(a) of this Exhibit, Business Associate agrees to take any and all corrective action necessary to prevent recurrence, to document any such action, and to make said documentation available to Covered Entity.
- c. Except as required by law, Business Associate agrees that it will not inform any third party of a

breach or unauthorized access, use or disclosure of PHI without obtaining the Covered Entity's prior written consent. Covered Entity hereby reserves the sole right to determine whether and how such notice is to be provided to any individuals, regulatory agencies, or others as may be required by law, regulation or contract terms, as well as the contents of such notice.

8. Indemnification.

Business Associate agrees to:

- a. Hold harmless, defend at its own expense, and indemnify Covered Entity for the costs of any mitigation undertaken by Business Associate pursuant to Section 7 of this Exhibit.
- b. Assume responsibility for any and all costs associated with the Covered Entity's notification of individuals affected by a breach or unauthorized access, use or disclosure by Business Associate or its employees, officers, subcontractors, agents or other representatives when such notification is required by any state or federal law or regulation, or under any applicable contract to which Covered Entity is a party.
- c. Hold harmless, defend at its own expense and indemnify Covered Entity and its respective employees, directors, officers, subcontractors, agents or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this Exhibit or from any acts or omissions related to this Exhibit by Business Associate or its employees, directors, officers, subcontractors, agents or other members of its workforce. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorney's fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Business Associate's acts or omissions hereunder. Business Associate's obligation to indemnify any

EXHIBIT C

HIPAA BUSINESS ASSOCIATE AGREEMENT (Form revision approved 4/18/18)

Indemnified Party shall survive the expiration or termination of the Agreement.

9. Individuals' Rights.

Business Associate agrees to:

- a. Provide access, at the request of Covered Entity, and in the time and manner designated by the 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 Section 164.524.
- b. Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to make pursuant to Section 164.526, at the request of Covered Entity or an individual, and in the time and manner designated by the Covered Entity.
- c. 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 Section 164.528.
- d. Provide to Covered Entity or an individual, in the time and manner designated by Covered Entity, information collected in accordance with Section 9(c) of this Exhibit, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with Section 164.528.
- e. Comply with any restriction to the use or disclosure of PHI that Covered Entity agrees to in accordance with Section 164.522.

10. Obligations of Covered Entity.

Covered Entity shall:

- a. Provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with Section 164.520, as well as any changes to such notice.
- b. Provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

- c. Notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

11. Agents and Subcontractors of Business Associate.

- a. Business Associate agrees to ensure that any agent, subcontractor, or other representative to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees in writing to the same restrictions, conditions and requirements that apply through this Exhibit to Business Associate with respect to such information, including the requirement to promptly notify the Business Associate of any instances of unauthorized access to or use or disclosure of PHI of which it becomes aware. Upon request, Business Associate shall provide copies of such agreements to Covered Entity.
- b. Business Associate shall implement and maintain sanctions against any agent, subcontractor or other representative that violates such restrictions, conditions or requirements and shall mitigate the effects of any such violation.

12. Audit, Inspection, and Enforcement.

- a. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, available to any state or federal agency, including the Secretary, for the purposes of determining compliance with HIPAA and any related regulations or official guidance.
- b. With reasonable notice, Covered Entity and its authorized agents or contractors may audit and/or examine Business Associate's facilities, systems, policies, procedures, and documentation relating to the security and privacy of PHI to determine compliance with the terms of this Exhibit. Business Associate shall promptly correct any violation of this Exhibit found by Covered Entity and shall certify in writing that the correction has been made. Covered Entity's failure to detect any

EXHIBIT C

HIPAA BUSINESS ASSOCIATE AGREEMENT (Form revision approved 4/18/18)

unsatisfactory practice does not constitute acceptance of the practice or a waiver of Covered Entity's enforcement rights under the Agreement.

Associate has violated a material term of this Exhibit.

13. Permissible Requests by Covered Entity. 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.

15. Amendment. The Parties agree to take such action as is necessary to amend this Exhibit from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of the HIPAA Privacy and Security Rules and the HITECH Act.

14. Term and Termination.

- a. The terms of this Exhibit shall remain in effect for the duration of all services provided by Business Associate under the Agreement and for so long as Business Associate remains in possession of any PHI received from, or created or received by Business Associate on behalf of Covered Entity unless Covered Entity has agreed in accordance with this section that it is not feasible to return or destroy all PHI.
- b. Upon termination of the Agreement, Business Associate shall recover any PHI relating to the Agreement and this Exhibit in its possession and in the possession of its subcontractors, agents or representatives. Business Associate shall return to Covered Entity, or destroy with the consent of Covered Entity, all such PHI, in any form, in its possession and shall retain no copies. If Business Associate believes it is not feasible to return or destroy the PHI, Business Associate shall so notify Covered Entity in writing. The notification shall include: (1) a statement that the Business Associate has determined that it is not feasible to return or destroy the PHI in its possession, and (2) the specific reasons for such determination. If Covered Entity agrees in its sole discretion that Business Associate cannot feasibly return or destroy the PHI, Business Associate shall ensure that any and all protections, requirements and restrictions contained in the Agreement and this Exhibit shall be extended to any PHI for so long as Business Associate maintains such PHI, and that any further uses and/or disclosures will be limited to the purposes that make the return or destruction of the PHI infeasible.
- c. Covered Entity may immediately terminate the Agreement if it determines that Business

16. Lost Revenues; Penalties/Fines.

- a. Lost Revenues. Business Associate shall make Covered Entity whole for any revenues lost arising from an act or omission in billing practices by Business Associate.
- b. Penalties/Fines for Failure to Comply with HIPAA. Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate's failure to comply with the obligations imposed by HIPAA.
- c. Penalties/Fines (other). Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

17. Entire Agreement. This Exhibit constitutes the entire HIPAA Business Associate Agreement between the parties, and supersedes any and all prior HIPAA Business Associate Agreements between them.

Revised 6/29/16/ SDF/ 2015418/ 930874_2