

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement, is effective as of **April 14, 2004**, by and between the _____ Benefit Plan on whose behalf this Business Associate Agreement has been executed and delivered, by (THE EMPLOYER'S NAME) as Administrator of the Plan (the "Plan Administrator"); and _____ the "Business Associate") having its principal office at _____

WITNESSETH:

Whereas, (THE EMPLOYER), having its principal office at (STREET ADDRESS; (CITY, STATE ZIP) (the "Company"), when acting as the Plan Sponsor as defined in the Employee Retirement Income Security Act of 1974, as amended ("ERISA") has established the Plans for the purpose of providing certain benefits to eligible participants;

Whereas, the Company, on behalf of each of the Plan, previously has entered into an agreement or agreements (collectively, the "Agreements") with the Business Associate, whereby the Business Associate has agreed to provide certain services to each Plan;

Whereas, to provide such services to the Plans, the Business Associate must have access to certain protected health information ("Protected Health Information" or "PHI"), as deemed in the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Standards") set forth by the U. S. Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA");

Whereas, to comply with the requirements of the Privacy Standards, each Covered Entity must enter into this Business Associate Agreement with the Business Associate.

Now, therefore, in consideration of the mutual covenants and agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Defined Terms. Capitalized terms, which are not otherwise defined in this Business Associate Agreement, shall have the meanings set forth in ERISA. When the term "Plan Administrator" is used in this Business Associate Agreement, it shall be deemed to be used with respect to that certain Plan for which that particular Plan Administrator acts; likewise, when the term "Plan" is used in this Business Associate Agreement, it shall be deemed to be used with respect to that certain Plan Administrator who acts on behalf of that particular Plan. Further, when a reference is made to "PHI," it is made with respect to information maintained by or for each of the Plans individually.

2. Obligations and Activities of the Business Associate. The Business Associate agrees to the following:

2.1. Duty Not to Use or Disclose PHI. Not to use or further disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law (as deemed in the Privacy Standards);

2.2. Duty to Safeguard PHI. To use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement;

2.3. Duty to Mitigate Damage Caused by Improper Disclosure. To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Business Associate Agreement;

2.4. Duty to Report Disclosure. To report to the appropriate Covered Entity any use or disclosure of PHI not provided for by this Business Associate Agreement of which it becomes aware;

2.5. Duty to Ensure Agents Agree to Same Restrictions. To ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by the Business Associate on behalf of, a Covered Entity agrees to the same restrictions and conditions that apply through this Business Associate Agreement to the Business Associate with respect to PHI;

2.6. Duty to Provide Access. To provide access, at the request of a Covered Entity, and in the time and manner designated by such Covered Entity, to PHI in a Designated Record Set (as defined in the Privacy Standards), to the Covered Entity or, as directed by the Covered Entity, to the person who is the subject of the PHI (as defined in the Privacy Standards, the "Individual") to meet the requirements under 45 CFR 164.524; provided, however, that this Section 2.6 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for a particular Covered Entity;

2.7. Duty to Make Records Available. To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, a Covered Entity available to such Covered Entity, or at the request of such Covered Entity to the Secretary of the U.S. Department of Health and Human Services, or his designee (collectively, the "Secretary"), in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary's determining such Covered Entity's compliance with the Privacy Standards;

2.8. Duty to Document Disclosures. To document such disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528; and

2.9. Duty to Make Amendments. To make any amendment(s) to PHI in a Designated Record Set that a Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of such Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section 2.7 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for a particular Covered Entity;

2.10. Duty to Provide Information. To provide to a Covered Entity or an Individual, in a time and manner designated by such Covered Entity, information collected in accordance with Section 2.9 of this Business Associate Agreement, to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

3. Permitted Uses and Disclosures by the Business Associate.

3.1. Permitted Uses and Disclosures. Except as otherwise limited in this Business Associate Agreement, the Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, each Covered Entity as specified in the Agreements, provided that such use or disclosure would not violate the Privacy Standards if done by the Covered Entity.

3.2. Specific Uses and Disclosures Provisions. Except as otherwise limited in this Business Associate Agreement, the Business Associate may:

a. Use for management and administration. Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; and

b. Disclose for management and administration. Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be 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.

4. Obligations of the Covered Entity. Each Covered Entity shall (a) provide the Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice; (b) provide the Business Associate with any changes in, or revocation of, permission by an individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures; (c) notify the Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI; and (d) not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Standards if done by the Covered Entity, except as set forth in Section 3.2 above.

5. Term and Termination.

5.1. Term. As to each Covered Entity, the term of this Business Associate Agreement shall be effective as of the date set forth above in the first paragraph and shall terminate when all of the PHI provided by the Covered Entity to the Business Associate, or created or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the 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.

5.2. Termination for Cause. Upon a Covered Entity's knowledge of a material breach of this Business Associate Agreement by the Business Associate with respect to PHI maintained for that Covered Entity, such Covered Entity shall provide an opportunity for the Business Associate to cure the breach or end the violation. The Covered Entity shall terminate this Business Associate Agreement and the applicable Agreement if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity, or immediately terminate this Business Associate Agreement and the applicable Agreement if the Business Associate has breached a

material term of this Business Associate Agreement and cure is not possible. If neither termination nor cure is feasible, the Covered Entity shall report the breach or violation to the Secretary. In the event of termination of this Business Associate Agreement by one or more Covered Entities, this Business Associate Agreement shall remain in effect as to the remaining Covered Entities.

5.3. Effect of Termination.

a. Return or Destruction of PHI. As to each Covered Entity, except as provided in Section 5.3(b), upon termination of this Business Associate Agreement, for any reason, the Business Associate shall return or destroy all PHI received from the Covered Entity, or created or received by the Business Associate on behalf of the Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate. The Business Associate shall retain no copies of PHI.

b. Return or Destruction of PHI Infeasible. In the event that the Business Associate determines that returning or destroying PHI is infeasible, the Business Associate shall provide to such Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, the Business Associate shall extend the protections of this Business Associate 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 the Business Associate maintains such PHI.

6. Regulatory References. A reference in this Business Associate Agreement to a section in the Privacy Standards means the section as in effect or as amended, and for which compliance is required at the time of the use or disclosure in question.

7. Amendment. The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for the Covered Entities to comply with the requirements of the Privacy Standards and HIPAA.

8. Survival. The respective rights and obligations of the Business Associate under Section 5.3 above shall survive the termination of this Business Associate Agreement.

9. Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits a Covered Entity to comply with the Privacy Standards.

10. Notices. All notices hereunder shall be in writing and delivered by hand, by certified mail, return receipt requested or by overnight delivery. Notices shall be directed to the parties at their respective addresses set forth in the first paragraph of this Business Associate Agreement or above their signature, as appropriate, or at such other addresses as the parties may from time to time designate in writing.

11. Entire Agreement; Modification. This Business Associate Agreement represents the entire agreement between the Business Associate and each Covered Entity relating to the subject matter hereof. No provision of this Business Associate Agreement may be modified, except in writing, signed by the parties.

12. No Third Party Beneficiaries. There shall be no third party beneficiaries to this Business Associate Agreement, and no individual (including an "Individual" as defined in the Privacy Standards) or entity who is not a party to this Business Associate Agreement shall have any rights in connection with a breach or violation of this Business Associate Agreement.

13. Binding Effect. This Business Associate Agreement shall be binding upon the parties hereto and their successors and assigns.

14. Counterparts. This Business Associate Agreement may be executed in any number of counterparts, which, when taken together, shall constitute one original.

In witness whereof, the parties hereto have executed this Agreement as of the above date.

WITNESS:

BUSINESS ASSOCIATE:

Signed: _____

Printed Name: _____

Title: _____

Phone Number: _____

WITNESS:

PLAN ADMINISTRATOR:

Signed: _____

Printed Name: _____

Title: _____

Phone Number: _____