

Health Insurance Portability and Accountability Act (HIPAA)

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is made and entered into as of January 1, 2023 (hereinafter “Effective Date”) by and between [Name of County] _____, on behalf of [Name of Plan(s)] _____ (hereinafter “Covered Entity”), and the **Association County Commissioners of Georgia** (hereinafter “Business Associate”).

Recitals

WHEREAS, the Department of Health and Human Services (“HHS”) has promulgated regulations at 45 C.F.R. Parts 160-164, implementing the privacy and electronic security requirements set forth in the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended by American Recovery and Reinvestment Act of 2009 (P.L. 111-5, ARRA) (“HIPAA”);

WHEREAS, Business Associate acknowledges that certain provisions of HIPAA have been amended in ways that directly regulate Business Associate’s obligations and activities with respect to Protected Health Information (“PHI”);

WHEREAS, HIPAA provides, among other things, that a Covered Entity is permitted to disclose Protected Health Information to Business Associate and allow Business Associate to obtain and receive Protected Health Information, if Covered Entity obtains satisfactory assurances in the form of a written contract that Business Associate will appropriately safeguard the Protected Health Information; and

WHEREAS, Business Associate will create, receive, maintain or transmit certain Protected Health Information in conjunction with the services being provided by Business Associate to Covered Entity pursuant to the Group Adoption Agreement entered into by the Business Associate and Covered Entity as of [Date of Signature on Group Adoption Agreement] _____ (the “Services Agreement”), thus necessitating a written agreement that meets the applicable requirements of the HIPAA Statute, including the Privacy, Security, Breach Notification, and enforcement rules at 45 CFR Part 160 and Part 164, the HITECH Act, and any associated Regulations, as such may be amended from time to time. Both parties have mutually agreed to satisfy the foregoing regulatory requirements through this Agreement.

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

1. Definitions; Applicability

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Electronic Protected Health Information, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information and Use.

- (a) Business Associate: “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103.
- (b) Covered Entity: “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103.

(c) Electronic Health Record: “Electronic Health Record” shall have the same meaning as the term “electronic health record” in the HITECH Act, Section 13400.

HIPAA: “HIPAA” collectively refers to the HIPAA Statute, including the Privacy, Security, Breach Notification, and enforcement rules at 45 CFR Part 160 and Part 164, the HITECH Act, and any associated Regulations, as such may be amended from time to time. (e) (All terms not defined herein shall have the meaning ascribed to them in the HIPAA Statute, including the Privacy, Security, Breach Notification, and enforcement rules at 45 CFR Part 160 and Part 164, the HITECH Act, and any associated Regulations, as such may be amended from time to time.

2. Obligations and Activities of Business Associate

(a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as required by law.

(b) Business Associate agrees to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

(c) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware, including breaches of unsecured PHI not provided for by the Agreement, and any security incident of which it becomes aware. In event of a Breach of Unsecured Protected Health Information by Business Associate or any of its officers, directors, employees, or subcontractors, Business Associate shall promptly notify Covered Entity in accordance with 45 C.F.R. 164.410.

(d) Business Associate and Covered Entity agree to mitigate, to the extent practicable, any harmful effect that is known to it arising out of a use or disclosure of Protected Health Information in violation of the requirements of this Agreement.

(e) In accordance with 45 CFR 164.502(e)(1) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.

(f) In accordance with 45 CFR 164.524, Business Associate agrees to make available PHI in a designated record set to the Covered Entity within twenty (20) days of a request by Covered Entity for access to PHI about an individual. In the event that any individual request access to PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within twenty (20) days of receiving such request. Business Associate may impose a reasonable cost-based fee for the provision of copies of Protected Health Information in a designated record set in accordance with 45 C.F.R. 164.524(c)(4).

(g) In accordance with 45 CFR 164.524, Business Associate agrees to make available any amendment(s) to Protected Health Information within twenty (20) days of a request by Covered Entity. Business Associate shall provide such information to Covered Entity for amendment and incorporate any amendments in the PHI as required by 45 C.F.R. 164.526. In the event a request for an amendment is delivered directly to Business Associate, Business Associate shall forward such request to Covered Entity within twenty (20) days of receiving such request.

(h) Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate, on behalf of Covered Entity, available to the Secretary, for purposes of the Secretary determining Covered Entity’s or Business Associate’s compliance with HIPAA.

(i) Business Associate agrees to document such disclosures of Protected Health Information 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 Protected Health Information in accordance with 45 C.F.R. 164.528.

(j) To the extent the Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

(k) Except for disclosures of PHI by Business Associate that are excluded from the accounting obligation as set forth in 45 CFR 164.528 or regulations issued pursuant to HITECH, Business Associate shall record for each disclosure the information required to be recorded by Covered Entities pursuant to 45 CFR 164.528. Within twenty (20) days of notice by Covered Entity to Business Associate that it has received a request for an account of disclosures of PHI, Business Associate shall make available to Covered Entity, or if requested by Covered Entity, to the individual, the information required to be maintained pursuant to this Agreement. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall forward such requests to Covered Entity within twenty (20) days of receiving such requests.

(l) Business Associate agrees to comply, where applicable, with Subpart C of 45 CFR Part 164 to maintain the security of the Electronic Protected Health Information and to prevent unauthorized uses or disclosures of such Electronic Protected Health Information. Business Associate shall report to the Covered Entity any Security Incident that results in the unauthorized use or disclosure of Protected Health Information of which it becomes aware.

3. Permitted Uses and Disclosures by Business Associate

- (a) Business Associate may use or disclose Protected Health Information for the following purposes:
As necessary to perform the services as agreed to between the Parties, notwithstanding the restrictions on such uses and disclosures as set forth in HIPAA and this Agreement.
- (b) Business Associate may use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity except for the specific purposes and disclosures set forth herein.
- (c) Business Associate may use or disclose Protected Health Information as required by law or where Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (d) Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity.
- (e) Business Associate may only de-identify PHI if permitted by Covered Entity and in any event may only de-identify PHI in accordance with 45 CFR 164.514(a)-(c).

4. Obligations of Covered Entity

4.1 Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

(a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520, as well as any changes to that notice.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

(c) Covered Entity shall notify Business Associate, in writing, of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522.

(d) Covered Entity warrants and represents that it shall provide to, or request from, the Business Associate only the minimum Protected Health Information necessary for Business Associate to perform or fulfill a specific function required or permitted hereunder.

(e) If Protected Health Information is transmitted by electronic transfer or sent in physical media by or on behalf of Covered Entity, Covered Entity shall transmit all such Protected Health Information to Business Associate in an encrypted format, to be mutually agreed by the parties.

(f) Except as otherwise permitted by this Agreement, Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR part 164 if done by Covered Entity.

4.2 Permissible Requests by Covered Entity

Covered Entity represents and warrants that it has the right and authority to disclose Protected Health Information to Business Associate for Business Associate to perform its obligations and provide services to Covered Entity, and Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would violate HIPAA, other applicable laws or Covered Entity's privacy notice, if done by Covered Entity.

5. Term and Termination

(a) Term. The provisions of this Agreement shall take effect as of the Effective Date, and shall terminate on the date the business relationship, or any services agreements, between Business Associate and Covered Entity, end or are terminated or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section.

(b) Termination for Cause. Upon the parties mutual agreement that there has been a material breach by Business Associate which does not arise from any breach by Covered Entity, 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 mutually agreeable time, or immediately terminate this Agreement if cure of such breach is not possible.

(c) Effect of Termination

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. Business Associate shall request, in writing, Protected Health Information that is in the possession of subcontractors of Business Associate.

(2) In the event the Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall extend the protection of this Agreement to such Protected Health Information and limit further uses or disclosures to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

(3) Notwithstanding these or any other data retention, destruction or return provisions elsewhere in this Agreement, Business Associate may, in accordance with legal, disaster recovery and records retention requirements, store copies of Covered Entity's Protected Health Information and other data in an archival format

(e.g. tape backups) or in non-archival backups on secure network drives, which may not be returned or destroyed upon request of Covered Entity. Such copies are subject to the obligations as set forth in this Agreement.

(4) **Survival:** The obligations of Business Associate under this section shall survive the termination of this Agreement.

6. Miscellaneous

(a) Regulatory References. A reference in this Agreement to a section of HIPAA means the section as in effect or as amended, and for which compliance is required.

(b) Amendment. Upon the enactment of any law or regulation affecting the use or disclosure of Protected Health Information, or the publication of any decision of a court of the United States or any state relating to any such law or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, the parties agree to negotiate in good faith to amend the Agreement as necessary to comply with such law or regulation.

Amendments must be made in writing and signed by both the Business Associate and Covered Entity. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. The terms of this Agreement are hereby incorporated into any service or business agreement that may be entered into between the Business Associate and Covered Entity with the intent to form a business relationship in the event of a conflict of terms between this Agreement and any such service or business agreement the terms of this Agreement shall prevail.

(c) Survival. The obligations of Business Associate under section 5(c)(2) of this Agreement shall survive the termination of this Agreement.

(d) Interpretation; Entire Agreement. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Business Associate and Covered Entity to comply with HIPAA. This Agreement shall be subject to the terms and conditions of the Services Agreement; provided, however, that in the event of any inconsistency or conflict between this Agreement and the Services Agreement, the terms, provisions and conditions of this Agreement shall govern and control. This Agreement and the Services Agreement constitute the complete agreement between the parties relating to the matters specified in this Agreement, and supersede all prior representations or agreements, whether oral or written, with respect to such matters.

(e) This Agreement sets forth the entire understanding of the Business Associate and Covered Entity. Any ambiguity in the terms of this Agreement shall be resolved to permit compliance with HIPAA. Any references in this Agreement to a section of HIPAA means the section as in effect or as may be amended. This Agreement may be modified or amended from time to time as is necessary for compliance with the requirements of HIPAA and other applicable laws.

(f) No third-party beneficiary. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.

(g) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

_____ [NAME OF COUNTY],

On behalf of: _____ [NAMES OF PLAN(S)]

By: _____

Name: _____

Title: _____

Association County Commissioners of Georgia

By: _____

Name: _____

Title: _____