

BUSINESS ASSOCIATE AGREEMENT

PROTECTED HEALTH INFORMATION

I. PREAMBLE

Pursuant to the Health Insurance Portability and Accountability Act (“HIPAA”) of 1996, and its implementing regulation, the Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. 82,462 *et seq.* (Dec. 28, 2000) (hereinafter the “HIPAA Privacy Rule”), **Company name**. (“Covered Entity”) and Benefit Strategies, LLC (“Business Associate”) (jointly “the Parties”) wish to enter into an Agreement that addresses the requirements of the HIPAA Privacy Rule with respect to “business associates,” as that term is defined in the HIPAA Privacy Rule.

Specifically, this Agreement is intended to ensure that the Business Associate will establish and implement appropriate safeguards (including certain administrative requirements) for “Protected Health Information” the Business Associate may create, receive, use, or disclose in connection with certain functions, activities, or services (collectively “services”) to be provided by Business Associate to Covered Entity. The services to be provided by Business Associate are identified in a separate agreement between the Parties entitled Administrative Service Agreement.

The Parties acknowledge and agree that in connection with the services to be provided, Business Associate will create, receive, use or disclose Protected Health Information. As set forth in the HIPAA Privacy Rule and as used herein, Protected Health Information (“PHI”) is defined as:

Individually identifiable health information maintained or transmitted in any form or medium, including, without limitation, all information (including demographic, medical, and financial information), data, documentation, and materials that relate to:

- (i) the past, present, or future physical or mental health or condition of an individual;**
- (ii) the provision of health care to an individual; or**
- (iii) the past, present, or future payment for the provision of health care to an individual.**

PHI does not include health information that has been de-identified in accordance with the standards for de-identification provided for in the HIPAA Privacy Rule.

In connection with Business Associate’s creation, receipt, use or disclosure of PHI, Business Associate and Covered Entity agree as follows:

II. GENERAL TERMS

- a. All capitalized term of this Agreement shall have the meanings set forth in the HIPAA Privacy Rule, unless otherwise defined herein.
- b. In the event of an inconsistency between the provisions of this Agreement and the mandatory terms of the HIPAA Privacy Rule, as may be expressly amended from time to time by the Department of Health and Human Services (HHS) or as a result of interpretations by HHS, a court, or another regulatory agency with authority over the Parties, the interpretation of HHS, such court or regulatory agency shall prevail. In the event of a conflict among the interpretations of these entities, the conflict shall be resolved in accordance with rules of precedence.
- c. Where provisions of this Agreement are different from those mandated by the HIPAA Privacy Rule, but are nonetheless permitted by the Rule, the provisions of the Agreement shall control.
- d. Except as expressly provided in the HIPAA Privacy Rule or this Agreement, this Agreement does not create any rights in third parties.


III. SPECIFIC REQUIREMENTS

- a. Business Associate agrees to create, receive, use, or disclose PHI only in a manner that is consistent with this Agreement or the HIPAA Privacy Rule and only in connection with providing the services to Covered Entity identified in the Administrative Service Agreement. Accordingly, in providing services to or for the Covered Entity, Business Associate, for example, will be permitted to use and disclose PHI for “treatment, payment and health care operations” in accordance with the HIPAA Privacy Rule. Additionally, under the

- a. HIPAA Privacy Rule, Business Associate also may use or disclose PHI received by the Business Associate in its capacity as a Business Associate to the Covered Entity if:
 - (i) the **use** relates to: (1) the proper management and administration of the Business Associate or to carry out legal responsibilities of the Business Associate, or (2) data aggregation services relating to the health care operations of the Covered Entity; or
 - (ii) the **disclosure** of information received in such capacity will be made in connection with a function, responsibility, or service identified in (i)(1), *and* such disclosure is required by law or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidential and the person agrees to notify the Business Associate of any breaches of confidentiality.
- b. Business Associate shall include in all contracts with its agents or subcontractors, if such contracts involve the disclosure of PHI to the agents or subcontractors, the same restrictions and conditions on the use and disclosure of PHI that are set forth in this Agreement.
- c. Business Associate shall maintain safeguards as necessary to ensure that PHI is not used or disclosed except as provided for by this Agreement.
- d. Business Associate shall report to Covered Entity any use or disclosure of PHI that is not provided for in this Agreement.
- e. In accordance with 45 C.F.R. § 164.524 of the HIPAA Privacy Rule, Business Associate will make available to those individuals who are subjects of PHI, their PHI in Designated Record Sets by providing the PHI to Covered Entity (who then will share the PHI with the individual), by forwarding the PHI directly to the individual, or by making the PHI available to such individual at a reasonable time and at a reasonable location.
- f. Business Associate shall make available PHI for amendment and incorporate any amendment to PHI in accordance with 45 C.F.R § 164.528 of the HIPAA Privacy Rule.
- g. Business Associate shall make available PHI for amendment and incorporate any amendment to PHI in accordance with 45 C.F.R. § 164.526 of the HIPAA Privacy Rule.
- h. Upon the termination or expiration of this Agreement, Business Associate agrees to return the PHI to Covered Entity, destroy the PHI (and retain no copies), or further protect the PHI if return or destruction is not feasible.
- i. Business Associate shall make available to the HHS or its agents the Business Associate's internal practices, books and records relating to the use and disclosure of PHI.
- j. The Parties agree that Covered Entity shall have the right to terminate this Agreement or seek other remedies if Business Associate violates a material term of his agreement.

IV. Acceptance

A duly authorized representative of each party whose signatures appear below has executed this Agreement:

<p>Benefit Strategies, LLC</p>  <p>Beth Smith, CFC Privacy Officer Date: 10/12/2005</p>	<p>Company name: _____</p> <p>Authorized Signature: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
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