

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (the “AGREEMENT”) is entered into on this _____ day of _____, 2010, the (“Effective Date”), between _____ (“Covered Entity”) and BENEFIT STRATEGIES, LLC. (“Business Associate”) (jointly “the Parties”).

WHEREAS, either simultaneously with the execution of this Agreement or previous hereto, Business Associate has been engaged to provide certain benefit administrative services to Covered Entity as set forth in a separate agreement between the Parties (the “Administrative Services Agreement”).

WHEREAS, the Parties agree to protect the confidentiality and security of Protected Health Information (“PHI”) in accordance with federal and state laws and corresponding regulations including, but not limited to, information protected by the Health Insurance Portability and Accountability Act of 1996, as may be amended from time to time (“HIPAA”) and the regulations promulgated thereunder, including the standards, requirements and specifications promulgated by the Secretary at 45 CFR Sections 160 and 164, subparts A, C, and E, as the same may be amended from time to time (the “HIPAA Regulations”) as well as the Health Information Technology for Economic and Clinical Health Act (“HITECH”) provisions of the American Recovery and Reinvestment Act of 2009 (Pub. L. 11-5)(“ARRA”), and any regulations promulgated thereunder; and

WHEREAS, Business Associate hereby agrees that it shall be prohibited from using or disclosing the PHI provided or made available by Covered Entity for any purpose other than as expressly permitted or required by this Agreement or as Required By Law.

NOW, THEREFORE, for valuable consideration the receipt of which is hereby acknowledged and intending to establish a business associate relationship under 45 CFR §164, the Parties hereby agree as follows:

I. Definitions

1. “**ARRA**” means the American Recovery and Reinvestment Act of 2009.
2. “**Breach**” means the acquisition, access, use or disclosure of PHI in a manner not permitted under the Privacy Rules which compromises the security or privacy of the PHI. Notwithstanding the foregoing, the term “Breach” shall not include (i) any unintentional acquisition, access or use of PHI by an employee or individual acting under the authority of Covered Entity or Business Associate if (A) such acquisition, access, or use was made in good faith and within the scope of authority or other professional relationship of such employee or individual, respectively, with Covered Entity and (B) such information does not result in the further use or disclosure in a manner not permitted by the Privacy Rule; (ii) any inadvertent disclosure by an individual who is otherwise authorized to access PHI at a facility operated by a Covered Entity or Business Associate to another similarly situated individual at the same facility and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted by the Privacy Rule; and (iii) a disclosure of PHI where a Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom disclosure is made would not reasonably have been able to retain such information.
3. “**CFR**” means the Code of Federal Regulations. A reference to a CFR section means that section, as amended from time to time; provided, however, that if future amendments change the designation of a section reference, or transfer a substantive regulatory provision reference to a different section, the modified section references shall be deemed to be amended accordingly.
4. “**Compliance Date**” means the date(s) established by the Secretary or the United States Congress as the effective date(s) of applicability and enforceability of the HIPAA Rules and HITECH Standards
5. “**Designated Record Set**” means the term “designated record set” used in 45 CFR §164.501 and shall include a group of records that are: (i) the enrollment, payment, claims adjudication and case or medical

management record systems maintained by or for Covered Entity by Business Associate or (ii) used, in whole or in part, by or for Covered Entity to make decisions about Individuals.

6. “**Electronic Health Record**” shall have the same meaning as the term “electronic protected health information” in ARRA, §13400 (5).
7. “**Electronic Protected Health Information**” shall have the same meaning as the term “electronic protected health information” in 45 CFR §§160.103 and 160.104
8. “**HHS**” means the U.S. Department of Health and Human Services.
9. “**HIPAA Rules**” means both the Privacy Rule and Security Rule.
10. “**HITECH Standards**” means the privacy, security and security breach notification provisions applicable to a Business Associate under Subtitle D of the Health Information Technology for Education and Clinical Health Act, which is Title XIII of the American Recovery and Reinvestment Act of 2009, and any regulations promulgated thereunder.
11. “**Individual**” means the term “individual” used in 45 CFR §160.103, and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
12. “**Privacy Rule**” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, Subparts A and E.
13. “**Protected Health Information (PHI)**” means the term “protected health information” used in 45 CFR §60.103, limited to the information received from or created on behalf of Covered Entity by Business Associate, or created by Business Associate, in any form or medium.
14. “**Required By Law**” shall have the same meaning as the term “required by law” used in 45 CFR §164.103.
15. “**Secretary**” shall mean the Secretary of the HHS and any other office or employee of HHS to whom the authority involved has been delegated.
16. “**Security Incident**” shall have the same meaning as the term “security incident” used 45 CFR §164.103.
17. “**Security Rule**” means the Standards for the Protection of Electronic Protected Health Information at 45 CFR parts 160 and 164, subparts A and C.
18. “**Unsecured Protected Health Information**” shall have the same meaning as the term “unsecured protected health information” in 45 CFR §164.402.

Terms used but not otherwise defined herein, shall have the same meaning as those terms in the HIPAA Rules and HITECH Standards.

II. Obligations and Activities of Business Associate

- a) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Agreement, as specified in the underlying Administrative Services Agreement, or as Required By Law. Business Associate will take reasonable efforts to limit requests for, use, and disclosure of PHI to the minimum necessary to accomplish the intended request, use or disclosure.
- b) Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall implement and maintain reasonable and appropriate administrative, technical and physical safeguards to protect PHI from loss, misuse and unauthorized access, disclosure, alteration and destruction, including but not limited to maintaining written policies and procedures to detect, prevent or mitigate identity theft based on PHI or information derived

from PHI. In addition, Business Associate agrees to implement and maintain administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI in compliance with the security requirements of the HIPAA Rules set forth in 45 CFR Parts 160 and 164 and any guidance issued by the Secretary.

- c) 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.
- d) To the extent known by Business Associate, Business Associate agrees to report to Covered Entity any use or disclosure of PHI other than as permitted by this Agreement promptly after Business Associate has actual knowledge of such use or disclosure and to report promptly to Covered Entity each Security Incident (as defined at 45 CFR §164.304) that it becomes aware as determined by Business Associate. Following the discovery of a Breach of unsecured PHI, Business Associate shall notify Covered Entity of such Breach promptly after Business Associate has actual knowledge of such use or disclosure. All reports of Breaches of Unsecured Protected Health Information shall be made in compliance with 45 CFR §164.410 and will include the identification of each individual whose unsecured PHI has been, or is reasonably believed to have been accessed, acquired or disclosed during the Breach. A Breach will be treated as discovered as of the first day that such Breach is known or reasonably should have been known by Business Associate.
- e) Business Associate agrees to ensure in its agreement with any agent, including a subcontractor, to whom it provides PHI received on behalf of the Covered Entity, any conditions with respect to such information that are at least as restrictive as those that apply through this Agreement to Business Associate. Business Associate agrees to ensure that any agents, including sub-agents, to whom it provides PHI received from, or created or received by Business Associate on behalf of the Covered Entity, agree in writing to implement the reasonable and appropriate safeguards that are at least as restrictive as those that apply to Business Associate through this Agreement to protect the Covered Entity's PHI.
- f) Business Associate agrees to provide access, at the request of Covered Entity, and in a reasonable time and manner, 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.
- g) If Business Associate maintains PHI in a Designated Record Set, Business Associate agrees to make available to Covered Entity such information that may be required to fulfill Covered Entity's obligations to respond to a request for access to PHI as provided under 45 CFR §164.524 or to respond to a request to amend PHI pursuant to 45 CFR §164.526 in a reasonable time and manner. Business Associate shall refer to Covered Entity all such requests that Business Associate may receive from Individuals. If Covered Entity requests Business Associate to amend PHI in Business Associate's possession to comply with 45 CFR §164.526, Business Associate shall effectuate such amendments no later than the date they are required to be made in accordance with 45 CFR §164.526; provided that if Business Associate receives such a request from Covered Entity less than ten (10) business days prior to such date, Business Associate will effectuate such amendments as soon as is reasonably practicable.
- h) Upon reasonable notice, Business Associate agrees to make internal practices, books, and records, relating to the use and disclosure of PHI available to the Secretary, at Covered Entity's expense for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule, including policies and procedures for PHI, relating to the use and disclosure of PHI received from, created, received by Business Associate on behalf of Covered Entity will be made available to the Covered Entity, or the Secretary, in a reasonable time and manner, or in a time designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA.
- i) If applicable, Business Associate agrees to provide Covered Entity, within a reasonable time, such information necessary to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures as provided under 45 CFR §164.528. Business Associate shall refer to Covered Entity all such requests that Business Associate may receive from Individuals.

- j) Notwithstanding any other provision in this Agreement, no later than February 17, 2010, unless a separate Compliance Date is specified by law, Business Associate hereby acknowledges and agrees that to the extent it is functioning as a Business Associate of Covered Entity, Business Associate will comply with the applicable provisions under HITECH Standards and with the obligations of a Business Associate as prescribed by the HIPAA Rules commencing on the Compliance Date of each such provision. Business Associate and the Covered Entity further agree that the provisions of the HIPAA Rules and HITECH Standards that apply to Business Associates and that are required to be incorporated by reference in a business Associate agreement are hereby incorporated in this Agreement between Business Associate and Covered Entity as if set forth in this Agreement in their entirety and are effective as of the Compliance Date.
- k) To the extent Business Associate is acting as a business associate as defined under the HITECH Regulations, Business Associate shall be subject to the penalty provisions specified in Section 13404 of ARRA.

III. Permitted Uses and Disclosures to Business Associate

General Use and Disclosure Provisions – Administrative Services Agreement

Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Administrative Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. Without limiting the generality of the foregoing, Business Associate shall not sell PHI or use or disclose PHI for purposes of marketing or fundraising, as defined and proscribed in the HIPAA Rules and ARRA.

Specific Use and Disclosure Provisions

- a) Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out any present or future legal responsibilities of Business Associate, each as related to activities performed pursuant to the Administrative Services Agreement.
- b) Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate or to fulfill present or future legal responsibilities of Business Associate, provided that such disclosure is either Required By Law or Business Associate obtains reasonable assurances from any person to whom the PHI is disclosed that: (i) it will remain confidential, (ii) any use or further disclosure shall be limited to the purpose for which it was disclosed to such person or as Required By Law, and (iii) Business Associate is notified of any instances of which it is aware in which the confidentiality of the information has been breached.
- c) Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services relating to the health care operations of the Covered Entity as permitted by 45 CFR §164.501.
- d) Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with §164.502(j)(1) and any regulations under ARRA.
- e) Business Associate may create de-identified data, provided that Business Associate deidentifies the information in accordance with the Privacy Rule. De-identified information does not constitute PHI and is not subject to the terms and conditions of this Agreement.

IV. Obligations of Covered Entity

- a) Covered Entity shall notify Business Associate of any facts or circumstances that affect Business Associate's use or disclosure of PHI. Such facts and circumstances include, but are not limited to: (i) any limitation or change in Covered Entity's of privacy practices, (ii) any changes in, or withdrawal of, an authorization provided to Covered Entity by an Individual in accordance with 45 CFR §164.508, to the extent that such limitation may affect Business Associate's use or disclosure of PHI, and (iii) any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- b) Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules or is not otherwise authorized or permitted under this Agreement.
- c) Covered Entity acknowledges and agrees that the Privacy Rules allow the Covered Entity to permit Business Associate to disclose or provide access to PHI, other than Summary Health Information, to the Plan Sponsor only after the Plan Sponsor has amended its plan documents to provide for the permitted and required uses and disclosures of PHI and to require the Plan Sponsor to provide a certification to the Plan that certain required provisions have been incorporated into the Plan documents before the Plan may disclose, either directly or through a Business Associate, any PHI to the Plan Sponsor. Covered Entity hereby warrants and represents that Plan documents have been so amended and that the Plan has received such certification from the Plan Sponsor.
- d) Covered Entity agrees that it has entered into Business Associate agreements with each third party to whom Covered Entity directs and authorizes Business Associate to disclose PHI.

V. Term and Termination

- a) Term. This Agreement shall be effective as of the date executed by both Parties, and shall terminate on the later of the (i) expiration or termination of the Administrative Services Agreement, or (ii) when all of the PHI provided by Covered Entity to Business Associate, or created 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.
- b) Material Breach.
 - i. Upon the Covered Entity's knowledge of a material breach by Business Associate of this Agreement, Covered Entity shall notify Business Associate of such breach and Business Associate shall have thirty (30) days to cure such breach. If the Business Associate does not timely cure the breach or determines that a cure is not feasible, Covered Entity may terminate this Agreement and the Administrative Services Agreement effective immediately upon written notice to Business Associate and, if required, notify the Secretary. The Parties understand and agree that termination of this Agreement under this provision shall constitute a default by Business Associate under the Administrative Services Agreement.
 - ii. Upon Business Associate's knowledge of a material breach by Covered Entity of this Agreement, Business Associate shall notify Covered Entity of such breach and Covered Entity shall have thirty (30) days to cure such breach. In the event Covered Entity does not cure the breach, or cure is infeasible, Business Associate may terminate this Agreement and the Administrative Services Agreement effective immediately upon written notice to Covered Entity and, if required, notify the Secretary. The Parties understand and agree that a termination of this Agreement under this

provision shall constitute a default by Covered Entity under the Administrative Services Agreement.

c) Effect of Termination.

- i. Except as provided in paragraph (ii) below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy any and all PHI received from Covered Entity or created 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.
- ii. In the event that Business Associate determines that returning or destroying the PHI is infeasible, or if Business Associate is required by law to retain such information or copies thereof, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon notification that returning or destroying the PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI in furtherance of such purposes that make the return or destruction infeasible, while Business Associate maintains such PHI. Business Associate will only retain such information or copies thereof for the time required under applicable law, or in accordance with Business Associate's internal record retention schedule as in effect from time to time, whichever is longer, after which time Business Associate shall return or destroy the PHI.

- e) Obligations After Termination. Business Associate's obligations under Sections II and III of this Agreement shall survive the termination of this Agreement with respect to any PHI that remains in possession of Business Associate.

VI. Miscellaneous

- a) HITECH. Covered Entity and Business Associate acknowledge that this Agreement is designed to comply with the mandates of the HIPAA Rules and the HITECH Standards. Covered Entity shall provide written notice to Business Associate to the extent that any final regulation or amendment to final regulations promulgated by the Secretary under HITECH requires changes to this Agreement. Such written notice shall include any additional amendment required by any such final regulation and this Agreement shall be automatically modified to incorporate the changes set forth in such amendment provided by Covered Entity. Such amendment to this Agreement shall be effective upon the written execution by both Parties.
- b) 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 HIPAA and ARRA, as each further may be amended or revised.
- c) Rights and Obligations. Nothing express or implied in this Agreement shall confer upon any person other than Covered Entity, Business Associate, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- d) Modification to Administrative Services Agreement. This Agreement is intended only to change the terms and conditions of and the rights and obligations of the Parties defined in the Administrative Services Agreement, as related to the use, security and disclosure of PHI and electronic transactions.
- e) Interpretation of Agreement. Any uncertainty or ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules and the HITECH Standards.
- f) Indemnity. Each party agrees to defend, indemnify and hold harmless the other party, its affiliates and each of their respective directors, officers, employees, agents or assigns from and against any and all actions,

uses of action, claims, suits and demands whatsoever, and from all damages, liabilities, costs, charges, debts, fines, government investigations, proceedings, and expenses whatsoever (including reasonable attorneys' fees and expenses related to any litigation or other defense of any claims), which may be asserted or for which they may now or hereafter become subject arising in connection with (i) any misrepresentation, breach of warranty or non-fulfillment of any undertaking on the part of the party under this Agreement; and (ii) any claims, demands, awards, judgments, actions, and proceedings made by any person or organization arising out of or in any way connected with the party's performance under this Agreement.

- g) Replace & Supersede. This Agreement shall replace and supersede in its entirety any prior Business Associate Agreement(s) between the Parties.
- h) Effective Date. This Business Associate Agreement shall be effective as of the applicable compliance Date.
- i) Binding Signature. Covered Entity's signature below shall constitute a valid and binding enforceable Business Associate Agreement between the Parties, even if the Covered Entity chooses not to countersign and return this Business Associate Agreement.

COVERED ENTITY: _____


Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____

BUSINESS ASSOCIATE – BENEFIT STRATEGIES, LLC

Authorized Signature: 

Printed Name: Beth Smith

Title: Privacy Officer

Date: February 17, 2010