

HIPAA BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT is entered into by and between _____ (“Business Associate”) an enterprise of the City of Colorado Springs, Colorado and the City of Colorado Springs (“Covered Entity”). Business Associate is an independent contractor of Covered Entity. Business Associate and Covered Entity are individually referred to as a “Party” and collectively as the “Parties.”

1. Applicability; Conflicts. This Agreement applies with respect to all contracts or other arrangements (“Underlying Agreement”) by and between Business Associate and Covered Entity that involve the use or disclosure of Protected Health Information (“PHI”). This Agreement addresses the business associate requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) as amended by the American Recovery and Reinvestment Act of 2009 (“ARRA”) (P.L. 111-5), HIPAA’s implementing regulations (45 C.F.R. Parts 160 and 164), all as may be further amended from time to time. Capitalized terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 160.103, 164.103, 164.304 and 164.501, as amended from time to time. As used in this Agreement, all references to PHI shall refer to the PHI of Covered Entity unless stated otherwise. In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the Underlying Agreement, the provisions of this Agreement shall control. Furthermore, any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA.

2. Obligations and Activities of Business Associate. Business Associate agrees as follows:

(a) Business Associate agrees not to use or further disclose PHI other than as permitted or required by this Agreement, the Underlying Agreement, or as Required By Law.

(b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate will document and keep these safeguards current. With respect to any and all electronic PHI, Business Associate agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.

(c) Business Associate agrees to report promptly, in writing, to Covered Entity any use or disclosure of PHI not provided for by this Agreement, or any Security Incident involving electronic PHI, of which Business Associate becomes aware. Each report shall identify the nature of the non-permitted use or disclosure, the PHI used or disclosed, the person(s) who made the use or disclosure, the person(s) who received the PHI, the corrective action taken by Business Associate and such other information as Covered Entity may reasonably request. Business Associate will cooperate with Covered Entity in the investigation and resolution of the matter, and will mitigate, to the extent practicable, any harmful effects that are known to or can reasonably be detected by Business Associate.

(d) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by, Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(e) Business Associate certifies that its workforce, as defined by 45 C.F.R. § 160.103 and who uses or discloses Covered Entity’s PHI, has been properly trained on Business Associate’s policies and procedures regarding compliance with HIPAA including sanction policies for failure to comply with these policies and procedures.

(f) Business Associate agrees to provide access to Covered Entity of PHI maintained in a Designated Record Set to enable Covered Entity to meet the requirements under 45 C.F.R. § 164.524. Business Associate agrees to make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 within the time and manner designated by Covered Entity. In the event that Business Associate receives a request directly from an Individual for a copy of his/her PHI or to amend his/her PHI, Business Associate shall forward such request within five (5) business days after receipt of such request to enable Covered Entity to respond to the Individual’s request.

(g) Business Associate agrees to make its 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 the Secretary of Health and Human Services (Secretary), in a time and manner designated by Covered Entity or the Secretary, for purposes of the Secretary determining Covered

Entity's compliance with HIPAA. Additionally, Business Associate shall immediately advise Covered Entity of any inspection request made by regulators.

(h) Business Associate agrees to document 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 45 C.F.R. § 164.528. Business Associate agrees to provide Covered Entity with information collected in accordance with this Agreement or the Underlying Agreement to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

(i) Compliance with ARRA.

(i) Business Associate will comply with the security requirements referenced in Section 13401 of ARRA, including the requirements of 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316.

(ii) Business Associate understands that it is now subject to the same federal penalties (ARRA Section 13401(b)) as Covered Entity for violation of the security requirements referenced therein. Business Associate accepts full responsibility for any penalties incurred as a result of its own breaches or violations of Covered Entity's PHI.

(iii) Business Associate will, following the discovery of a breach of "unsecured PHI," as defined in 45 C.F.R § 164.402, notify Covered Entity of such breach within 15 days. The notice shall include the identification of each Individual whose unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such breach. A breach is discovered as of the first day on which such breach is known to Business Associate or should have been reasonably known to Business Associate.

(iv) Upon discovery of a breach of unsecured PHI by Business Associate, Covered Entity and Business Associate will collaborate to determine which Party is in the best position to provide notification.

(v) Business Associate will maintain documentation of all breach notifications it makes or the application of any exceptions to the definition of breach to demonstrate that nonfiction was not required.

(vi) Business Associate may use and disclose PHI only if such use or disclosure, respectively, is in compliance with each applicable requirement of 45 C.F.R. § 164.504(e) (Uses and disclosures: Organizational requirements: Business

associate contracts) and the privacy requirements referenced in Section 13404 of ARRA.

(vii) Business Associate shall provide an accounting of disclosures to Individuals requesting an accounting as required by Section 13405(c) of ARRA.

(viii) Business Associate will comply with each of the requirements of ARRA listed in Sections 2(h)(i)-(iv) as and when that requirement becomes effective. Further, Business Associate will comply with any and all privacy and security regulations issued pursuant to ARRA and applicable to Business Associate as and when those regulations are effective.

3. Permitted Uses and Disclosures by Business Associate.

(a) Except as otherwise limited in this Agreement or the Underlying Agreement, Business Associate may use or disclose PHI to perform services to or on behalf of Covered Entity as described in and in compliance with the Underlying Agreement, provided that such use or disclosure would not violate HIPAA if undertaken by Covered Entity.

(b) Except as otherwise limited in this Agreement or the Underlying Agreement, Business Associate may:

(i) use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate; and

(ii) disclose PHI for the proper management and administration of Business Associate, provided that such disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and 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 Covered Entity.

(a) Covered Entity shall 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.

(b) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance

with 45 C.F.R. § 164.522, if such restriction affects Business Associate's permitted or required uses or disclosures.

(c) Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA.

5. Term and Termination.

(a) This Agreement shall be effective as of the date that the Underlying Agreement is effective with respect to Covered Entity, and shall terminate 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) Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach in accordance with the Underlying Agreement. Covered Entity may terminate this Business Associate Agreement ("this Agreement") and the Underlying Agreement between Covered Entity and Business Associate which is the subject of any material breach of this Agreement by Business Associate if Business Associate does not cure the breach as provided in the Underlying Agreement. If Business Associate has breached a material term of this Agreement and cure is not possible, Covered Entity may immediately terminate this Agreement. This provision shall be in addition to and shall not limit any rights of termination or obligations set forth in the Underlying Agreement.

(c) If Covered Entity knows of a pattern of activity or practice by Business Associate that constitutes a material breach or violation of this Agreement and the breach or violation continues, and if termination of this Agreement is not feasible, Covered Entity is required by HIPAA to report the breach or violation to the Secretary of Health and Human Services.

(d) Effect of Termination.

(i) Except as provided in Section 5(c)(iii), upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Destruction shall include destruction of all copies including backup tapes and other electronic backup media. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Except as provided in Section

5(c)(ii), 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, Business Associate shall notify Covered Entity of the conditions that make return or destruction infeasible, extend the protections of this 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 Business Associate maintains such PHI.

(iii) Business Associate's obligation to protect the privacy of PHI is continuous and survives any termination, cancellation, expiration, or other conclusion of this Agreement or the Underlying Agreement.

6. Indemnification.

(a) Business Associate agrees to hold harmless Covered Entity, its officers, agents or employees from and against any and all claims, liabilities, demands, damages, losses, costs and expenses, including costs and reasonable attorney's fees, or claims for injury or damages that are caused by or result from the acts or omissions of Business Associate, its officers, employees, agents and subcontractors with respect to the use or disclosure of Covered Entity's PHI.

7. Miscellaneous.

(a) Governing Law. The interpretation of this Agreement and the resolution of any disputes arising under this Agreement are governed solely by the laws of Colorado, exclusive of any of the choice of law provisions of that or any other state. If any action or other proceeding is brought on or in connection with this Agreement, the venue of such action will be exclusively in Colorado having venue over the Underlying Agreement. Each Party consents to the jurisdiction of such courts and waives any objection it may have with respect to venue.

(b) Notices. Any and all notices required or permitted under this Agreement will be made in writing (ink-and-paper) and may be sent by United States mail, overnight delivery service, or facsimile transmission and will be deemed to have been received by the applicable Party (i) three (3) business days after the confirmed date of deposit with the United States Postal Service, (ii) the date of delivery if by overnight delivery service, or (iii) one (1) business day after transmission when sent by confirmed facsimile transmission (each a "Notice Date") to the applicable address / fax number as set forth on the signature pages to this Agreement or such different

address / fax number as a Party may designate in a notice provided to the other Party.

(c) Change in Law. The Parties acknowledge that amendments to applicable state or federal law or regulations or a court or regulators' interpretation of such laws or regulations may necessitate future changes to this Agreement. In such event, the Parties agree to provide written notice of such conflict to the other Party and to negotiate in good faith toward a written amendment to comply with such changes in the law or regulations or interpretation of the law or regulations.

(d) Assignment. Nothing express or implied in this Agreement is intended to confer or assign any rights, remedies, obligations or liabilities upon any person or entity other than Covered Entity and Business Associate and their respective successors and assigns.

(e) No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all

“BUSINESS ASSOCIATE”:

By: _____
Print Name: _____
Title: _____
Date: _____

rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person or entity on such Agreement. It is the express intention of the Parties hereto that any person or entity, other than the Parties to this Agreement, receiving services or benefits under this Agreement shall be deemed to be incidental beneficiaries only.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized representatives on the dates indicated below. EACH OF THE INDIVIDUALS SIGNING THIS AGREEMENT PERSONALLY REPRESENTS AND WARRANTS THAT THE PARTY FOR WHOM HE OR SHE IS ACTING HAS DULY AUTHORIZED THE EXECUTION AND PERFORMANCE OF THIS AGREEMENT.

“COVERED ENTITY”:

CITY OF COLORADO SPRINGS

By: _____
Print Name: Curt DeCapite
Title: Procurement Services Manager
Date: _____