

## **BUSINESS ASSOCIATE AGREEMENT**

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is entered into effective October 1, 2015, by and between Webb County ("COUNTY"), Texas and Valley Risk Consulting, Inc. ("Business Associate").

### **RECITALS**

WHEREAS, COUNTY has created a self-funded employee health and welfare benefits plan ("the Plan") for the benefit of its Members; and

WHEREAS, the Plan is a covered entity for the purposes of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPPA") and both the HIPPA Privacy Rule and the HIPPA Security Rule promulgated by the United States Department of Health and Human Services at 45 CFR Sections 160 and 164; and

WHEREAS, Business Associate and COUNTY have entered into an agreement ("the Service Agreement"), pursuant to which Business Associate performs functions that assist COUNTY in the operation of the Plan; and

WHEREAS, it may be necessary for COUNTY and Business Associate to disclose protected health information to each other to facilitate performance of the functions performed by Business Associate for COUNTY; and

WHEREAS, both the Privacy Rule and the Security Rule require that there be an agreement between covered entities and business associates that governs the use and disclosure of protected health information, including electronic protected health information;

NOW, THEREFORE, in consideration of the beneficial relationship enjoyed by the parties pursuant to the Service Agreement, the parties agree as follows:

### **Part I Definitions**

The following definitions apply to this Agreement:

- 1.1 "Administrative, Physical and Technical Safeguards" shall have the same meaning as the term "administrative, physical and technical safeguards" in 45 CFR § 164.304.
- 1.2 "Availability" shall mean the property that data or information are accessible and usable upon demand by an authorized person.
- 1.3 "Confidentiality" shall mean the property that data or information are not made available or disclosed to unauthorized persons or processes.

- 1.4 "Designated Record Set" shall mean the set of records used to make decisions about an individual that relate to: 1) medical information or billing records provided by a health care provider; or 2) the enrollment, payment, claims, adjudication, and case or medical management records maintained by or for a health plan. This includes the group of records used or maintained by a health care clearinghouse.
- 1.5 "Electronic Protected Health Care Information" or "EPHI" shall have the same meaning as the term "electronic protected health care information" in 45 CFR 160.103, limited to the data or information created or received by Business Associate from or on behalf of COUNTY.
- 1.6 "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- 1.7 "Integrity" shall mean the property that data or information have not been altered or destroyed in an unauthorized manner.
- 1.8 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164.
- 1.9 "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of COUNTY. Unless noted otherwise, Protected Health Information includes EPHI.
- 1.10 "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.512.
- 1.11 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- 1.12 "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operation in an information system.
- 1.13 "Security Rule" means the Security Standards for Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C.

In addition, unless otherwise noted, any terms used in this Agreement that are defined in the Privacy Rule or the Security Rule shall have the same meaning as those terms have

under the Privacy Rule or the Security Rule.

**Part II**  
**Obligations and Activities of Business Associate**

- 2.1 Business Associate agrees not to use or disclose Protected Health Information other than as permitted or required by the Service Agreement or as Required by Law.
- 2.2 Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by the Service Agreement.
- 2.3 Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate.
- 2.4 Business Associate agrees to report to COUNTY any use or disclosure of the Protected Health Information or EPHI not provided for by this Agreement of which it becomes aware.
- 2.5 Business Associate agrees to require that any individual or entity, including an agent or subcontractor, to whom it provides Protected Health Information received from COUNTY, or created or received by Business Associate on behalf of COUNTY, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 2.6 Business Associate agrees to provide an Individual prompt and reasonable access, at the request of COUNTY, to Protected Health Information of the Individual in any Designated Record Set in its possession or control, except Protected Health Information excluded from disclosure by 45 CFR § 164.524(a)(1)(i), (ii), (iii), to COUNTY or, as directed by COUNTY, to an Individual in order to meet the requirements under 45 CFR § 164.524.
- 2.7 Business Associate agrees to make any amendment(s) to Protected Health Information in any Designated Record Set in its possession or control that COUNTY directs or agrees to pursuant to 45 CFR § 164.526, at the request of COUNTY or an Individual, and further agrees to do so within 30 days of a written request from COUNTY.
- 2.8 Business Associate agrees to make its internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by

Business Associate on behalf of, COUNTY available to the Secretary of the United States Department of Health and Human Service, in the time and manner designated by the Secretary, for purposes of the Secretary determining COUNTY's compliance with the Privacy Rule.

- 2.9 Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for COUNTY to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
- 2.10 Business Associate agrees to provide within 30 days, to either COUNTY or an Individual as directed by COUNTY, information collected in accordance with Section 2.9 of this Agreement, to permit COUNTY to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
- 2.11 At COUNTY's request, Business Associate agrees to take such other commercially reasonable actions as are necessary to allow COUNTY to comply with the Privacy Rule as it pertains to Business Associate's obligations under the Service Agreement.
- 2.12 Business Associate will implement appropriate Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of the EPHI that it creates, receives, maintains, or transmits on behalf of COUNTY, including EPHI that is exchanged or transmitted between Business Associate and COUNTY.
- 2.13 Business Associate will report to COUNTY as soon as possible any unauthorized use or disclosure of EPHI, including any Security Incident, of which it becomes aware.
- 2.14 The business associate hereby certifies it is in compliance with the minimum HIPAA security standards and will, each year of the contract term; certify in writing that it continues to be in compliance.

### **Part III**

#### **Permitted Uses and Disclosures by Business Associate**

- 3.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on

behalf of, COUNTY as set forth in the Service Agreement governing the business relationship between COUNTY and Business Associate, provided that such use or disclosure would not violate the Privacy Rule if done by COUNTY or the minimum necessary policies and procedures of COUNTY.

- 3.2 Business Associate may use and disclose Protected Health Information for the management and administration of the Business Associate.
- 3.3 Business Associate may provide data aggregation services relating to the health care operations of COUNTY.

**Part IV  
Obligations of COUNTY**

- 4.1 COUNTY shall notify Business Associate of any limitation(s) in COUNTY's notice of privacy practices in accordance with 45 CFR 5 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- 4.2 COUNTY shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- 4.3 COUNTY shall notify Business Associate of any restriction to the use or disclosure of Protected Health information that COUNTY 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 Protected Health Information.

**Part V.  
Permissible Requests by COUNTY**

COUNTY shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by COUNTY.

**Part VI.  
Term and Termination.**

- 6.1 Term. Subject to Section 6.3 below, the Term of this Agreement shall be effective as of

- October 1, 2015 and shall terminate when all of the Protected Health Information provided by COUNTY to Business Associate, or created or received by Business Associate on behalf of COUNTY, is destroyed or returned to COUNTY.
- 6.2 Terminate for Cause. Upon COUNTY's knowledge of a material breach by Business Associate, COUNTY shall either: 1) Provide an opportunity for Business Associate to cure the breach and terminate this Agreement and the Service Agreement only if Business Associate does not cure the breach or end the violation within the time specified by COUNTY; 2) immediately terminate this Agreement and the Service Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or 3) if neither termination nor cure are feasible, COUNTY shall report the violation to the Secretary.
- 6.3 Effect of Termination. Except as provided below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health information received from COUNTY, or created or received by Business Associate on behalf of COUNTY. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to COUNTY notification of the conditions that make return or destruction feasible. If COUNTY agrees that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

## **Part VII**

### **Miscellaneous Provisions**

- 7.1 Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- 7.2 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for COUNTY to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191. However, any amendments must be in writing and signed by both Parties.

- 7.3 Survival. The respective rights and obligations of Business Associate under Section 6.3 shall survive the termination of this Agreement.
- 7.4 Any ambiguity in this Agreement shall be resolved to permit COUNTY to comply with the Privacy Rule.
- 7.5 Liability. The parties' liability under this Agreement shall be subject to any limits of liability set forth in the Service Agreement. In no event shall either party be liable under this Agreement for indirect, special, consequential or punitive damages, even if the party is advised of the possibility of such damages, and regardless of the form of action.

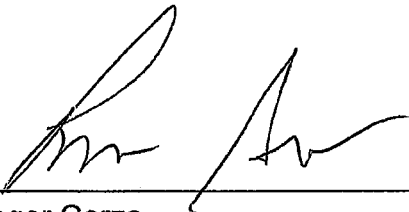
IN WITNESS WHEREOF the parties have executed this Agreement to take effect on the Effective Date.

Webb  
County Texas

By:

Name: Roger Garza  
Title: Senior Consultant for Valley Risk Consulting, Inc.

Date:

  
\_\_\_\_\_  
4/2/16  
\_\_\_\_\_

Webb  
County, Texas

ATTEST:

\_\_\_\_\_  
Tano E. Tijerina  
Webb County Judge

\_\_\_\_\_  
Margie Ramirez Ibarra  
Webb County Clerk