

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “Agreement”) is made effective as of _____ (“Effective Date”) by and between Sentara Health Plans, Inc. (“Covered Entity”) and _____ (“Business Associate”).

In consideration of the mutual covenants herein contained and intending to be legally bound hereby, the parties hereto agree as follows:

I. DEFINITIONS

- A. In General.** Terms used, but not otherwise defined, in this Agreement shall have the same meaning established for the purposes of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), ARRA (as defined below), the Privacy Rule (as defined below), the Security Rule (as defined below) and the Unsecured PHI Breach Rule (as defined below), as each is amended from time to time.
- B. Specific Definitions.**
1. “Applicable Law” shall mean any of the following items, including any amendments to any such item as such may become effective:
 - a. HIPAA;
 - b. the federal regulations regarding privacy and promulgated with respect to HIPAA, found at Title 45 CFR Parts 160 and 164 (the “Privacy Rule”);
 - c. the federal regulations regarding electronic data interchange and promulgated with respect to HIPAA, found at Title 45 CFR Parts 160 and 162 (the “Transaction Rule”);
 - d. the federal regulations regarding security and promulgated with respect to HIPAA, found at Title 45 CFR Parts 160 and 164 (the “Security Rule”);
 - e. the federal regulations regarding notification in the case of breach of Unsecured PHI, found at Title 45 CFR Parts 160 and 164 (the “Unsecured PHI Breach Rule”); and
 - f. ARRA.
 2. “ARRA” means Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009.

3. “ePHI” means electronic protected health information within the meaning of 45 CFR § 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.
4. “PHI” shall have the same meaning as the term “protected health information” in 45 CFR § 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.
5. “Underlying Agreement” shall mean any agreement between Covered Entity and Business Associate, under which Business Associate, on behalf of Covered Entity, provides a service or product, or performs or assists in the performance of a function or activity, which involves the disclosure, creation, receipt, maintenance, or transmission of PHI by Business Associate from or on behalf of Covered Entity.
6. “Unsecured PHI” shall have the same meaning as the term “unsecured protected health information” in 45 CFR § 164.402, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.

II. RIGHTS AND OBLIGATIONS OF BUSINESS ASSOCIATE

A. General Obligations and Activities.

1. Business Associate shall not use or disclose PHI except as permitted by this Agreement or as required by law.
2. Business Associate shall use appropriate safeguards, and comply with the Security Rule with respect to ePHI, to prevent use or disclosure of PHI other than as provided for in this Agreement. Business Associate shall encrypt (as that term is defined in 45 CFR § 164.304) its portable electronic devices that contain ePHI in a manner that is consistent with the “Guidance Specifying the Technologies and Methodologies That Render Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals” issued by the Department of Health and Human Services as published in the Federal Register (74 FR 19006) on April 27, 2009.
3. To the extent the Business Associate is to carry out one or more of Covered Entity’s obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations.
4. Business Associate shall not receive remuneration, either directly or indirectly, in exchange for PHI, except as may be permitted by ARRA § 13405(d) and 45 CFR § 164.502(a)(5)(ii), as amended from time to time.

B. Reporting of Violations.

1. Business Associate shall report to Covered Entity within five (5) business days of it becoming aware of:
 - a. Any use or disclosure of PHI not provided for by this Agreement,
 - b. Any security incident, or
 - c. Any acquisition, access, use or disclosure of Unsecured PHI in a manner not permitted by the Privacy Rule.

2. The reports made to Covered Entity pursuant to paragraph 1 above shall include all relevant facts concerning the event and, with respect to reports of events set forth in paragraph 1.c. above, shall include the identity of each individual whose Unsecured PHI has been, or is reasonably believed by the Business Associate to have been, acquired, accessed, used or disclosed. As soon as possible thereafter, and to the extent known, Business Associate shall also provide Covered Entity with a description of:
 - a. What happened, including the date of the acquisition, access, use or disclosure and the date of it becoming aware to Business Associate;
 - b. The types of Unsecured PHI involved in the acquisition, access, use or disclosure;
 - c. Any steps an individual should take to protect themselves from the acquisition, access, use or disclosure; and
 - d. What Business Associate is doing to investigate the acquisition, access use or disclosure, to mitigate harm to individuals and to protect against any further unpermitted acquisition, access, use or disclosure of Unsecured PHI.

3. Business Associate will cooperate with Covered Entity's investigation and/or risk assessment with respect to any report made by Business Associate pursuant to paragraph 1.c. above and will abide by Covered Entity's decision with respect to whether such acquisition, access, use or disclosure constitutes a breach of Unsecured PHI for purposes of the Unsecured PHI Breach Rule.

4. Business Associate agrees to follow the instructions of Covered Entity with respect to any event reported to Covered Entity under paragraph 1.c. above that Covered Entity determines to be a breach of Unsecured PHI. Business Associate acknowledges that this may include, but not be limited to, the actions set forth in paragraphs a. through d. below:

- a.** Providing written notice of the Unsecured PHI breach, on behalf of Covered Entity, without unreasonable delay, but no later than sixty (60) calendar days following the date the breach is discovered or such later date as is authorized under 45 CFR § 164.412, to each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, used, or disclosed as a result of the HIPAA Breach. The content, form, and delivery of such written notice shall comply in all respects with 45 CFR § 164.404(c)-(d). Business Associate and Covered Entity shall cooperate in all respects regarding the drafting and the content of the notice. To that end, before sending any notice to any individual, the Business Associate shall first provide a draft of the notice to the Covered Entity. Covered Entity shall have five (5) business days (plus any reasonable extensions) to provide comments on the Business Associate's draft of the notice.
- b.** Business Associate will provide written notice of the breach of Unsecured PHI, on behalf of the Covered Entity, to the media to the extent required under 45 CFR § 164.406. Business Associate and the Covered Entity shall cooperate in all respects regarding the drafting and the content of the notice. To that end, before sending any notice to the media, Business Associate shall first provide a draft of the notice to the Covered Entity. Covered Entity shall have five (5) business days (plus any reasonable extensions) to provide comments on the Business Associate's draft of the notice.
- c.** Business Associate will provide written notice of the breach of Unsecured PHI, on behalf of the Covered Entity, to the Secretary to the extent required under 45 CFR § 164.408. Business Associate and Covered Entity shall cooperate in all respects regarding the drafting and the content of the notice. To that end, before sending any notice to the Secretary, Business Associate shall first provide a draft of the notice to the Covered Entity. Covered Entity shall have five business days (plus any reasonable extensions) to provide comments on Business Associate's draft of the notice.
- d.** If the breach of Unsecured PHI involves fewer than five hundred (500) individuals, Business Associate will maintain a log or other documentation of the breach of Unsecured PHI which contains such information as would be required to be included if the log were maintained by the Covered Entity pursuant to 45 CFR § 164.408, and provide such log to the Covered Entity within five (5) business days of the Covered Entity's written request.

C. Subcontractors.

1. In accordance with 45 C.F.R. § 164.308(b)(2), Business Associate shall ensure that any subcontractor that creates, receives, maintains or transmits ePHI on behalf of the Business Associate agrees to comply with the HIPAA Security Rule by entering into a contract or other arrangement that complies with 45 C.F.R. § 164.314.
 2. In accordance with 45 C.F.R. § 164.502(e)(1)(ii), Business Associate shall ensure that any subcontractor that creates, receives, maintains or transmits PHI on behalf of the Business Associate agrees to the same restrictions and conditions that apply to the Business Associate with respect to the PHI by entering into a contract or other arrangement that complies with 45 C.F.R. § 164.504(e)(1)(i).
- D. Access to Books and Records by Secretary.** Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of the Covered Entity available to the Secretary for purposes of the Secretary determining Covered Entity's compliance with Applicable Law. Business Associate shall immediately notify Covered Entity upon receipt by Business Associate of any request for access by the Secretary, and shall provide Covered Entity with a copy thereof as well as a copy of all materials disclosed pursuant thereto.
- E. Mitigation.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of any item reportable to Covered Entity under paragraph B.1. above.
- F. Obligations Relating to Individual Rights.**
1. **Restrictions on Disclosures.** Upon request by an individual, Covered Entity shall determine whether an individual shall be granted a restriction on disclosure of the PHI pursuant to 45 CFR § 164.522. Covered Entity will not agree to any such restriction, if such restriction would affect Business Associate's use or disclosure of PHI, without the prior consent of Business Associate, *provided, however*, that Business Associate's consent is not required for requests that must be granted under ARRA § 13405(a). Covered Entity will communicate any grant of a request, made consistent with the foregoing, to Business Associate. Business Associate will restrict its disclosures of the individual's PHI in the same manner as would be required for Covered Entity. If Business Associate receives an individual's request for restrictions, Business Associate shall forward such request to Covered Entity within five (5) business days.

2. **Access to PHI.** Upon request by an individual, Covered Entity shall determine whether an individual is entitled to access his or her PHI pursuant to 45 CFR § 164.524. If Covered Entity determines that an individual is entitled to such access, and that such PHI is under the control of Business Associate, Covered Entity will communicate the decision to Business Associate. Business Associate shall provide access to the PHI in the same manner as would be required for Covered Entity. If Business Associate receives an individual's request to access his or her PHI, Business Associate shall forward such request to Covered Entity within five (5) business days.
3. **Amendment of PHI.** Upon request by an individual, Covered Entity shall determine whether any individual is entitled to amend his or her PHI pursuant to 45 CFR § 164.526. If Covered Entity determines that an individual is entitled to such an amendment, and that such PHI is both in a designated record set and under the control of Business Associate, Covered Entity will communicate the decision to Business Associate. Business Associate shall provide an opportunity to amend the PHI in the same manner as would be required for Covered Entity. If Business Associate receives an individual's request to amend his or her PHI, Business Associate shall forward such request to Covered Entity within five (5) business days.
4. **Accounting of Disclosures.** Upon request by an individual, Covered Entity shall determine whether any individual is entitled to an accounting pursuant to 45 CFR § 164.528. If Covered Entity determines that an Individual is entitled to an accounting, Covered Entity will communicate the decision to Business Associate. Business Associate will provide information to Covered Entity that will enable Covered Entity to meet its accounting obligations. If Business Associate receives an Individual's request for an accounting, Business Associate shall forward such request to Covered Entity within five (5) business days.

G. Permitted Uses and Disclosures by Business Associate.

Except as otherwise limited in this Agreement or by Applicable Law, Business Associate may:

1. Use or disclose PHI to perform functions, activities, or services for or on behalf of Covered Entity, as specified in any Underlying Agreement between the parties and in this Agreement, provided that such use or disclosure (i) is consistent with Covered Entity's notice of privacy practices and (ii) would not violate the Privacy Rule if done by Covered Entity, except for the specific uses and disclosures set forth in paragraphs 2 and 3 below;

2. Use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate;
3. Disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that (i) Business Associate obtains reasonable written assurances from the person to whom the information is disclosed that it will remain confidential and 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 or (ii) the disclosures are required by law; and
4. Use PHI to provide data aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).

III. RIGHTS AND OBLIGATIONS OF COVERED ENTITY

A. Privacy Practices and Restrictions.

1. Upon request, Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520. If Covered Entity subsequently revises the notice, Covered Entity shall provide a copy of the revised notice to Business Associate.
2. 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 CFR § 164.522. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

B. Permissible Requests by Covered Entity.

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, provided that Covered Entity and Business Associate acknowledge that Business Associate may use or disclose PHI for the purposes and in accordance with the terms and conditions of paragraph II.G. of this Agreement.

IV. TERM AND TERMINATION

- A. Term.** The term of this Agreement shall begin on the Effective Date, and shall end: (i) upon termination or expiration of the last remaining Underlying Agreement, or if there is no Underlying Agreement in effect, when Covered Entity ceases disclosing PHI to Business Associate or allowing Business Associate access to or use of PHI, or (ii) upon termination for cause as set forth in the following Section IV.B, whichever is earlier.
- B. Termination for Cause.** Upon either party's knowledge of a material breach of this Agreement by the other party, the nonbreaching party shall have the following rights:
1. If the breach is curable, the nonbreaching party may provide an opportunity for the other party to cure the breach or end the violation. Alternatively, or if the other party fails to cure the breach or end the violation, the nonbreaching party may terminate this Agreement and any Underlying Agreement.
 2. If the breach is not curable, the nonbreaching party may immediately terminate this Agreement and any Underlying Agreement.
 3. If termination is not feasible, the nonbreaching party may report the problem to the Secretary.
- C. Effect of Termination.**
1. Except as provided in Section IV.C.2 of this Agreement, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI within its possession or control, and all PHI that is in the possession or control of Business Associate's subcontractors or agents. Business Associate shall retain no copies of the PHI.
 2. If Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Business Associate shall 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.

3. Except as otherwise expressly provided in this Agreement, all covenants, agreements, representations and warranties, express and implied, in this Agreement shall survive the expiration or termination of this Agreement, and shall remain in effect and binding upon the Parties until they have fulfilled all of their obligations hereunder and the statute of limitations shall not commence to run until the time such obligations have been fulfilled. Any terms of this Agreement that must survive the expiration or termination of this Agreement in order to have their intended effect, shall survive the expiration or termination of this Agreement whether or not expressly stated.

V. INDEMNIFICATION

Business Associate shall indemnify and hold Covered Entity harmless from and against all claims, liabilities, judgments, fines, assessments, penalties, awards or other expenses, of any kind or nature whatsoever, including, without limitation, attorney's fees, expert witness fees, and costs of investigation, litigation or dispute resolution, relating to or arising out of any breach of this Agreement by Business Associate. No provision concerning limitation of liability under any Underlying Agreement shall apply to Business Associate's obligations under this Agreement.

VI. RIGHT TO INJUNCTIVE RELIEF

Covered Entity and Business Associate agree that any violation of the provisions of this Agreement may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law, in equity, or under this Agreement, in the event of any violation by Business Associate of any of the provisions of this Agreement, or any explicit threat thereof, Covered Entity shall be entitled to an injunction or other decree of specific performance with respect to such violation or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.

VII. MISCELLANEOUS

- A. **Electronic Health Records.** The parties agree that Business Associate shall not maintain any "electronic health record" or "personal health record," as those terms are defined in ARRA, for or on behalf of Covered Entity. As such, Business Associate has no obligation to document disclosures that are exempt from the accounting requirement under 45 CFR § 164.528(1)(i)-(ix), and Covered Entity agrees not to include Business Associate on any list Covered Entity produces pursuant to ARRA § 13405(c)(3).

- B. Amendment.** To the extent that Applicable Law is amended in the future and to the extent that such amendments contain requirements and/or provisions not already contained in this Agreement that are required to be incorporated into this Agreement, the parties agree that either (i) this Agreement shall be deemed to be automatically amended to the extent necessary to incorporate such additional requirements and/or provisions, or (ii) if determined necessary by Covered Entity, they will enter into an amendment to this Agreement in order to incorporate any such additional requirements and/or provisions. All amendments to this Agreement, except those occurring by operation of law, shall be in writing and signed by both parties.
- C. Authority to Execute Agreement.** The individuals executing this Agreement on behalf of each party warrant and represent that they are authorized to execute this Agreement on behalf their respective party and have the power to bind their respective party to the terms set forth in this Agreement.
- D. Survival.** The respective rights and obligations of the parties under Sections II.D., IV.C, V and VI of this Agreement shall survive the term and termination of this Agreement.
- E. Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with Applicable Law.
- F. Primacy.** To the extent that any provisions of this Agreement conflict with the provisions of any Underlying Agreement or any other agreement or understanding between the parties, this Agreement shall control with respect to the subject matter of this Agreement.
- G. No Third Party Beneficiaries.** This Agreement is for the sole benefit of the Parties, and there are no third party beneficiaries to the Agreement.
- H. No Assignment.** Covered Entity has entered into this Agreement in specific reliance on the expertise and qualifications of Business Associate. Consequently, Business Associate's duties under this Agreement may not be transferred, assigned or assumed by any other person, in whole or in part, without the prior written consent of the Covered Entity. Subject to the foregoing, this Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective permitted successors and assigns.
- I. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. An executed Agreement delivered by facsimile or other electronic transmission shall be treated as if an original.

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IN WITNESS WHEREOF, the parties have executed this Business Associate Agreement as of the date first above written.

SENTARA HEALTH PLANS, INC.

[BUSINESS ASSOCIATE]

By: _____

By: _____

Print Name: _____

Print Name: _____

Its: _____

Its: _____