

BUSINESS ASSOCIATE AGREEMENT

THIS UNILATERAL BUSINESS ASSOCIATE AGREEMENT is executed by First Professionals Insurance Company, Inc. (hereinafter "FPIC" or "Business Associate") and shall be effective April 20, 2005 or if a new policyholder after said date upon the effective date of the insured's policy.

Recitals

Business Associate and the insured have an insurer/insured relationship by virtue of a professional liability policy issued by FPIC to the insured, hereinafter, "Insurance Policy". Business Associate and the named insured(s) on the coverage summary of the Insurance Policy are committed to complying with the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Regulations") under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Under the Privacy Regulations, the insured is a "covered entity," and, as defined by 45 C.F.R. §164.502(e) and 45 C.F.R. §164.504(e), FPIC is a business associate of the insured. Business Associate must use and/or disclose Protected Health Information in its performance of services under the Insurance Policy. Business Associate agrees to abide by the assurances, terms, and conditions contained herein in the performance of its obligations. This Agreement sets forth the manner in which Protected Health Information, that is provided to, or received by, the Business Associate from the insured, or on behalf of the insured, will be handled. The Business Associate agrees as follows:

Section 1 Definitions

- 1.1 **Covered Entity:** "Covered Entity" shall mean the insured.
- 1.2 **Designated Record Set:** "Designated Record Set" means "Designated Record Set" as defined in 45 C.F.R. §164.501.
- 1.3 **Individual:** "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).
- 1.4 **Privacy Rule:** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. parts §160 and §164, subparts A and E.
- 1.5 **Protected Health Information (PHI):** "Protected Health Information" (PHI) shall have the same meaning as the term "Protected Health Information" in 45 C.F.R. §164.501, limited to the information received by Business Associate from, or on behalf of, Covered Entity.
- 1.6 **Secretary:** "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.

Section 2 Obligations and Activities of Business Associate

Business Associate agrees to the following:

- 2.1 **Not to Use or Disclose PHI Unless Permitted.** Business Associate agrees not to use, or further disclose, Protected Health Information other than as permitted or required by the Agreement or as required or allowed by law.
- 2.2 **Use Safeguards.** Business Associate agrees to use reasonable safeguards to prevent use or disclosure of the Protected Health Information other than as allowed by this Agreement or as otherwise required or allowed by law.
- 2.3 **Report Inappropriate Disclosures of PHI.** Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not permitted by this Agreement or by law.
- 2.4 **Compliance of Agents.** Business Associate agrees to require any agents, including subcontractors, to agree to the same restrictions and conditions that apply to Business Associate through this Agreement provided that such agents perform a service that the Business Associate agreed to perform for, or on behalf of, the Covered Entity under the Insurance Policy and, to whom the Business Associate provides Protected Health Information.
- 2.5 **Access.** To the extent the Business Associate maintains the Designated Record Set, Business Associate agrees to provide access to Protected Health Information in the original Designated Record Set, during normal business hours, provided the Covered Entity delivers prior written notice to the Business Associate, at least five business days in advance, requesting such access but only to the extent required by 45 C.F.R. §164.524.
- 2.6 **Amendments.** To the extent the Business Associate maintains the Designated Record Set, Business Associate agrees to incorporate any amendment(s) to Protected Health Information in the original Designated Record Set that the Covered Entity directs, pursuant to 45 C.F.R. §164.526.
- 2.7 **Disclosure of Practices, Books, and Records.** Unless otherwise protected from discovery or disclosure by law or unless otherwise prohibited from discovery or disclosure by law, Business Associate agrees to make internal practices, books, and records available to the Covered Entity or to the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule but only to the extent such access is related to the use and disclosure of Protected Health Information received from the Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall have a reasonable time within which to comply with such requests and, in no case shall access be required in less than five business days after the Business Associate's receipt of such request.
- 2.8 **Accounting.** Business Associate agrees to maintain sufficient documentation to allow it to provide to Covered Entity a list of any disclosures of Protected Health Information by the Business Associate or its agents so as to allow the Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. §164.528.
- 2.9 **Release of Documentation of Disclosures.** Business Associate agrees to provide to Covered Entity information collected in accordance with Section 2.8 of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. §164.528. Business Associate shall have a reasonable time within which to comply with such requests and, in no case shall access be required in less than five business days after the Business Associate's receipt of such request.
- 2.10 **Security of Electronic Protected Health Information (E PHI).** FPIC agrees to: (1) 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; (2) ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it; and (3) report to the Covered Entity any security incident of which it becomes aware.

Section 3 Permitted Uses and Disclosures by Business Associates

3.1 *Use of PHI for Specified Purposes*

Under the Insurance Policy, the Business Associate provides the Covered Entity with insurance products and services, hereinafter "Services" that involve the use and disclosure of Protected Health Information as defined by the Privacy Regulations. These Services may include, among others, the provision of professional liability insurance; receiving and evaluating incidents, claims, and lawsuits; quality assessment; quality improvement; loss prevention tools; outcomes evaluation; protocol and clinical guidelines development; reviewing the competence or qualifications of health care professionals; evaluating practitioner and provider performance; conducting training programs to improve the skills of health care practitioners and providers; credentialing, conducting or arranging for medical review; arranging for legal services; conducting or arranging for audits to improve compliance and other functions necessary to perform these Services. Except as otherwise specified herein, the Business Associate may make any uses of Protected Health Information necessary to perform its obligations under this Agreement and under the Insurance Policy. Moreover, the Business Associate may disclose Protected Health Information for the purposes authorized by this Agreement: (i) to its employees, subcontractors, and agents, in accordance with paragraphs Section 3.2 through 3.4 of this Section below; or (ii) as otherwise permitted by the terms of this Agreement. All other uses not authorized by this Agreement are prohibited.

3.2 *Use of PHI for Business Associate Management and Administration.* Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

3.3 *Disclosure Required by Law or With Reasonable Assurances.* Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate and to carry out its legal responsibilities, provided that disclosures are required by law, or provided that the Business Associate obtains the following reasonable assurances from the person or entity to whom the Protected Health Information is disclosed: 1) the PHI will remain confidential; 2) the PHI will be used or further disclosed only as required by law or for the purposes for which it was disclosed; and, 3) the person or entity will notify the Business Associate of any instances of which the person or entity is aware in which the confidentiality of the information has been breached.

3.4 *Data Aggregation Services.* Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. §164.504(e)(2)(i)(B).

Section 4 Impermissible Requests by Covered Entity

Business Associate understands that the Covered Entity 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 Covered Entity, except that, despite this Section 4, Business Associate may use or disclose Protected Health Information for data aggregation or management and administrative activities of Business Associate as is otherwise permitted by this Agreement.

Section 5 Term and Termination

5.1 *Term.* The Term of this Agreement shall be effective during the term of the Insurance Policy between the Business Associate and the Covered Entity and shall terminate when all of the Protected Health Information 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 not feasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this section.

5.2 *Termination for Cause.* Upon Covered Entity's knowledge of a material breach by Business Associate of this Agreement, Covered Entity shall provide an opportunity for Business Associate to cure the breach. If Business Associate fails or is unable to cure the breach after a reasonable period of time Covered Entity may terminate this Agreement.

5.3 *Effect of Termination.* Upon termination of the Insurance Policy, the protections of this Agreement will remain in force and Business Associate shall make no further uses and disclosures of Protected Health Information except for the proper management and administration of its business or to carry out its legal responsibilities or as required by law.

Section 6 Miscellaneous Provisions

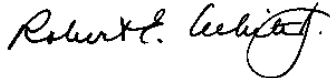
6.1 *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the Section in effect or as amended, and for which compliance is required.

6.2 *Amendment.* The Business Associate agrees to take such action as is necessary to amend this Agreement from time to time as is necessary, as determined by the Business Associate, for compliance with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191 as determined by the Business Associate.

6.3 *Survival.* The rights and obligations of Business Associate under this Agreement shall survive the termination of this Agreement and the termination of the Insurance Policy.

6.4 *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.

Business Associate



Robert E. White, Jr.
President