

BUSINESS ASSOCIATE AGREEMENT

THIS UNILATERAL BUSINESS ASSOCIATE AGREEMENT (“**BA Agreement**”) is executed by FPIC Insurance Group, Inc. on behalf of each of its insurance company affiliates including First Professionals Insurance Company, Inc., Anesthesiologists Professional Assurance Company, Intermed Insurance Company, Interlex Insurance Company and Advocate, MD Insurance of the Southwest, Inc. (hereinafter collectively “**FPIC**” or “**Business Associate**”) for the benefit of their respective insureds deemed to be Covered Entities (as defined herein) and shall be effective September 23, 2009 (or such later date to the extent that HIPAA or HITECH or its regulations require a future compliance date), or, if a new policyholder after said dates, upon the effective date of the insured’s policy. This BA Agreement supersedes and replaces all previous BA Agreements between FPIC and its insureds.

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 or continuation of coverage endorsement of the Insurance Policy are committed to complying with the Health Insurance Portability and Accountability Act of 1996 as codified at 42 U.S.C. § 1320d (“**HIPAA**”) and the Health Information Technology for Economic and Clinical Health Act as codified at 42 U.S.C.A. prec. § 17901 (“**HITECH**”). Under HIPAA and HITECH, 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 BA 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** “**Breach**” shall mean the acquisition, access, use or disclosure of Protected Health Information in a manner not permitted under 45 C.F.R. Part 164, Subpart E, which compromises the security or privacy of the Protected Health Information. “Breach” shall not include:
- (a.) Any unintentional acquisition, access, or use of Protected Health Information by a workforce member or person acting under the authority of Covered Entity or Business Associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the HIPAA Privacy Regulations; or
 - (b.) Any inadvertent disclosure by a person who is authorized to access Protected Health Information at Covered Entity or Business Associate to another person authorized to access Protected Health Information at Covered Entity or Business Associate, respectively, and the information received as a result of such disclosure is not further use or disclosed in a manner not permitted under the HIPAA Privacy Regulations; or
 - (c.) A disclosure of Protected Health Information where Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- 1.2** **Covered Entity:** “Covered Entity” shall mean the insured.
- 1.3** **Designated Record Set:** “Designated Record Set” means “Designated Record Set” as defined in 45 C.F.R. §164.501.
- 1.4** “**Electronic Protected Health Information**” or “**Electronic PHI**” means Protected Health Information that is transmitted by or maintained in electronic media as defined in the HIPAA Security Regulations.
- 1.5** “**HIPAA Privacy Regulations**” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- 1.6** “**HIPAA Security Regulations**” shall mean the Standards for Security of Individually Identifiable Health Information at 45 C.F.R. part 160 and subparts A and C of part 164.
- 1.7** “**HITECH Standards**” means the privacy, security and security Breach notification provisions applicable to a Business Associate under Subtitle D of HITECH and any regulations promulgated thereunder.
- 1.8** “**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).
- 1.9** “**Individually Identifiable Health Information**” means information that is a subset of health information, including demographic information collected from an individual, and;
- (a.) is created or received by a health care provider, health plan, employer or health care clearinghouse; and
 - (b.) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and
 - (i) that identifies the individual; or
 - (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- 1.10** “**Protected Health Information**” (**PHI**) shall have the same meaning as the term “Protected Health Information” in 45 C.F.R. §164.103 (as amended by HITECH), limited to the information received by Business Associate from, or on behalf of, Covered Entity.
- 1.11** “**Required By Law**” shall have the same meaning as the term “required by law” in 45 CFR 164.5011.11.
- 1.12** “**Secretary**” shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- 1.13** “**Unsecured Protected Health Information**” shall mean PHI that is not secured through the use of technology or methodology specified by the Secretary in regulations or as otherwise defined in section 13402(h) of HITECH.
- 1.14** Terms used but not otherwise defined in this BA Agreement shall have the same meaning as the meaning ascribed to those terms in HIPAA, HITECH, and any current and future regulations promulgated under HIPAA or HITECH.

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 this BA Agreement or as required or allowed by law.
- 2.2** *Use Safeguards.* Business Associate agrees to use reasonable administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as allowed by this BA Agreement or as otherwise required or allowed by law.
- 2.3** *Mitigation.* 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 in violation of the requirements of this BA Agreement.
- 2.4** *Notice of Use or Disclosure, Security Incident or Breach.* Business Associate agrees to notify the designated Privacy Official of the Covered Entity of any use or disclosure of PHI by Business Associate not permitted by this BA Agreement, any Security Incident (as defined in 45 C.F.R. section 164.304) involving Electronic PHI, and any Breach of Unsecured Protected Health Information within five (5) business days.
- (a.) Business Associate shall provide the following information to Covered Entity within ten (10) business days of discovery of a Breach except when despite all reasonable efforts by Business Associate to obtain the information required, circumstances beyond the control of the Business Associate necessitate additional time. Under such circumstances Business Associate shall provide to Covered Entity the following information as soon as possible and without unreasonable delay, but in no event later than thirty (30) calendar days from the date of discovery of a Breach:
- (i) the date of the Breach;
 - (ii) the date of the discovery of the Breach;
 - (iii) a description of the types of unsecured PHI that were involved;
 - (iv) identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed; and
 - (v) any other details necessary to complete an assessment of the risk of harm to the Individual.
- (b.) Covered Entity will be responsible to provide notification to Individuals whose unsecured PHI has been disclosed, as well as the Secretary and the media, as required by Sec. 13402 of the HITECH Act, 42 U.S.C.A. § 17932;
- (c.) The Parties agree that this section satisfies any notices necessary by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to Covered Entity shall be required. For purposes of this Agreement, "Unsuccessful Security Incidents" include activity such as pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of Electronic PHI.
- 2.5** *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 BA Agreement or by law.
- 2.6** *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 BA 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.
- 2.7** *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.
- 2.8** *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.
- 2.9** *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.
- 2.10** *Accounting.* To provide documentation regarding any disclosures by Business Associate that would have to be included in an accounting of disclosures to an Individual under 45 CFR 164.528 (including without limitation a disclosure permitted under 45 CFR 164.512) and under HITECH, within a reasonable amount of time of receipt of a request from Covered Entity.
- 2.11** *Release of Documentation of Disclosures.* Business Associate agrees to provide to Covered Entity information collected in accordance with Section 2.8 of this BA 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.
- 2.12** *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.
- 2.13** *Minimum Necessary.* To limit its uses and disclosures of, and requests for, PHI (a) when practical, to the information making up a Limited Data Set; and (b) in all other cases subject to the requirements of 45 CFR 164.502(b), to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request.
- 2.14** *Compliance with HITECH Standards.* Notwithstanding any other provision in this Agreement, no later than February 17, 2010, unless a separate effective date is specified by law or this Agreement for a particular requirement (in which case the separate effective date shall be the effective date for that particular requirement), Business Associate shall comply with the HITECH Standards, including, but not limited to: (1) compliance with the requirements regarding minimum necessary under HITECH section 13405(b); (2) requests for restrictions on use or disclosure to health plans for payment or health care operations purposes when the provider has been paid out of pocket in full consistent with HITECH section 13405(a); (3) the prohibition of sale of PHI without authorization unless an exception under HITECH section 13405(d) applies; (4) the prohibition on receiving remuneration for certain communications that fall within the exceptions to the definition of marketing under 45 C.F.R. section 164.501 unless permitted by this Agreement and section 13406 of HITECH; (5) the requirements relating to the provision of access to certain information in electronic access under HITECH section 13405(e); (6) compliance with each of the Standards and Implementation Specifications of 45 C.F.R. section 164.308

(Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards) and 164.316 (Policies and Procedures and Documentation Requirements); and (7) the requirements regarding accounting of certain disclosures of PHI maintained in an Electronic Health Record under HITECH section 13405(c).

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 HIPAA 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 BA Agreement and under the Insurance Policy. Moreover, the Business Associate may disclose Protected Health Information for the purposes authorized by this BA 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 BA Agreement. All other uses not authorized by this BA 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 HIPAA or HITECH or the applicable regulations under such laws 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 BA Agreement.

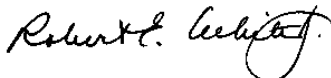
Section 5 Term and Termination

- 5.1 *Term.*** The Term of this BA 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 BA 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 BA Agreement.
- 5.3 *Effect of Termination.*** Upon termination of the Insurance Policy, the protections of this BA 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 BA Agreement to a section in HIPAA or HITECH 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 BA Agreement from time to time as is necessary, as determined by the Business Associate, for compliance with the requirements of the HIPAA or HITECH or any applicable regulations in regard to such laws as determined by the Business Associate.
- 6.3 *Survival.*** The rights and obligations of Business Associate under this BA Agreement shall survive the termination of this BA Agreement and the termination of the Insurance Policy.
- 6.4 *Interpretation.*** Any ambiguity in this BA Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA or HITECH or any applicable regulations in regard to such laws.

Business Associate



Robert E. White, Jr.
Vice President
FPIC Insurance Group, Inc.