



## **HIPAA BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”) is entered into by and between Central Health Plan of California, Inc., a California corporation (“Plan”), and \_\_\_\_\_ (“Business Associate”).

### **Recitals**

A. WHEREAS, the purpose of this Agreement is to comply with the Standards for Privacy of Individually Identifiable Health Information and the Security Standards at 45 C.F.R. Parts 160, 162 and 164 (collectively, the “HIPAA Regulations”) under the *Health Insurance Portability and Accountability Act of 1996* (“HIPAA”), the Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the *Health Information Technology for Economic and Clinical Health Act* (“HITECH”), and the Genetic Information Nondiscrimination Act (GINA);

B. WHEREAS, the U.S. Department of Health and Human Services has promulgated the Security Standards for the Protection of Electronic Protected Health Information, which are codified at 45 CFR Part 160 and 45 CFR Part 164, subparts “A” and “C” (the “HIPAA Security Rule”) and which require that Plan incorporate mandatory provisions into its written agreements with all organizations which perform any function or activity involving the creation, receipt, maintenance, or transmission of Electronic Protected Health Information on behalf of Plan;

C. WHEREAS, the parties hereto have a prior agreement dated \_\_\_\_\_ (the “Service Agreement”) under which Business Associate regularly uses and/or discloses Protected Health Information and Electronic Protected Health Information in its performance of services for Plan; and

D. WHEREAS, this Agreement sets forth the terms and conditions pursuant to which Protected Health Information that is provided by Plan to Business Associate, or created or received by Business Associate from or on behalf of Plan, will be handled during the term of the Service Agreement and after its termination.

NOW, THEREFORE, in consideration of the recitals above and the mutual covenants and conditions contained herein, Business Associate and Plan agree as follows:

### **Agreement**

#### **1. Definitions.**

##### 1.1 Catch-all definition.

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

1.2 “Business Associate” shall have the same meaning ascribed in the HIPAA Regulations, and in reference to the party to this agreement, shall mean Business Associate.

1.3 “Covered Entity” shall have the same meaning ascribed in the HIPAA Regulations, and in reference to the party to this agreement, shall mean Plan.

1.4 “Electronic Health Record” means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

1.5 “Electronic Protected Health Information” shall have the meaning ascribed in the HIPAA Regulations.

1.6 “HITECH Amendment” means the changes to HIPAA made by the Health Information Technology for Economic and Clinical Health Act.

1.7 “Protected Health Information” has the same meaning as the meaning ascribed in the HIPAA Regulations, limited to the information created or received by Business Associate from or on behalf of Plan.

1.8 “Security Incident” shall have the meaning ascribed in the HIPAA Regulations which at the time of this Agreement means the attempted or successful unauthorized access, use disclosure, modification, or destruction of information or interference with system operations in an information system.

## **2. Permitted Uses and Disclosures of Protected Health Information.**

Pursuant to the Service Agreement, Business Associate provides services for Plan that involve the use and disclosure of Protected Health Information. Except as otherwise specified herein, Business Associate may use or disclose Protected Health Information only as necessary to perform its obligations under the Services Agreement, provided that such use or disclosure would not violate the HIPAA Regulations if done by Plan and provided that Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. Additionally, Business Associate may disclose Protected Health Information for the purposes authorized by this Agreement only (i) to its employees, subcontractors, and agents, in accordance with Section 3.1(e) hereof, (ii) as directed by Plan, (iii) as required by Secretary, or (iv) as otherwise permitted by the terms of this Agreement. All other disclosures not authorized by this Agreement are prohibited.

## **3. Responsibilities of the Parties.**

3.1 Responsibilities of Business Associate. With regard to its use and/or disclosure of Protected Health Information, Business Associate hereby agrees to:

(a) Not use or disclose Protected Health Information other than as permitted or required by this Agreement or as otherwise required by law;

(b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information, to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement;

(c) Implement and comply with (and ensure that its subcontractors implement and comply with) the standards set forth at Subpart C of 45 CFR Part 164, to reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Security Rule;

(d) Establish and implement procedures for mitigating, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information that violates the requirements of this Agreement;

(e) Report to the designated privacy officer of Plan, in writing, any use and/or disclosure of the Protected Health Information that is not permitted or required by this Agreement of which Business Associate becomes aware within three (3) calendar days of Business Associate's discovery of such unauthorized use and/or disclosure, including breaches of unsecured Protected Health Information as required at 45 CFR § 164.410, and any security incident of which it becomes aware;

(f) In accordance with 45 CFR Parts 164.502(e)(1)(ii) and 164.308(b)(2), require and ensure that all of its employees, representatives, and agents, including subcontractors, that create, receive, maintain, transmit, use, or have access to Protected Health Information under this Agreement to agree in writing to adhere to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information on the use and/or disclosure of Protected Health Information that apply herein, including the obligation to return or destroy the Protected Health Information as provided under Section 5.3 hereof;

(1) Implement and maintain sanctions against any agent or subcontractor that violates such restrictions and conditions and mitigate the effects of any such violation;

(g) Provide access, within ten (10) calendar days of receipt by Business Associate of a request by Plan, to Protected Health Information in a Designated Record Set, to Plan or, as directed by Plan, to an Individual, or Individual's designee in order to meet the requirements under 45 C.F.R. § 164.524.

(h) Make any amendment(s) to Protected Health Information in a Designated Record Set that Plan directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Plan or an Individual, within ten (10) calendar days of receipt by Business Associate of such request, or to take other measures as necessary to satisfy covered entity's obligations under 45 CFR Part 164.526;

(1) If any Individual requests an amendment to Protected Health Information directly from Business Associate or its agent or subcontractor, Business Associate must notify Plan in writing within five (5) calendar days of receipt of the request.

(2) Any denial of amendment of Protected Health Information maintained by Business Associate or its agent or subcontractor shall be the responsibility of Plan;

(i) Make available all records, books, agreements, and policies and procedures relating to the use and/or disclosure of Protected Health Information received from, created, or received by Business Associate on behalf of Plan, available to Plan, or at the request of Plan to the Secretary of the U.S. Department of Health and Human Services ("HHS"), in a time and manner designated by Plan or the Secretary, for purposes of the Secretary determining Plan's compliance with the HIPAA Regulations, subject to attorney-client and other applicable legal privileges;

(j) Within ten (10) calendar days of receiving a written request from Plan, make available to Plan during normal business hours at Business Associate's offices all records, books, agreements, and policies and procedures relating to the use and/or disclosure of Protected Health Information for purposes of enabling Plan to determine Business Associate's compliance with the terms of this Agreement;

(k) Maintain and make available within ten (10) calendar days of receiving a written request from Plan, the information required to provide an accounting of

disclosures of Protected Health Information and information related to such disclosures as would be required for Plan to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR Part 164.528, or an accounting of disclosures of Protected Health Information from an Electronic Health Record in accordance with the HITECH Amendment; Business Associate shall retain such documentation during the term of this Agreement and for a period of ten (10) years following termination of the Agreement. Business Associate shall not disclose Protected Health Information unless directed in writing by Plan or as expressly permitted under this Agreement of the Services Agreement.

(l) Ensure that any agent, group provider or subcontractor to whom Business Associate provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect such Electronic Protected Health Information; provided however, that Business Associate shall not assign, delegate, or subcontract any obligation of Business Associate owed by Plan in violation of this Agreement.

(m) To the extent the Business Associate is to carry out one or more of Plan's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that would apply to the Plan in the performance of such obligation(s);

(n) Immediately report to Plan any Security Incident, of which Business Associate becomes aware.

(o) Authorize termination of the Service Agreement by Plan if Plan determines that Business Associate has violated a material term of this Agreement.

(p) Business Associate understands that pursuant to the HITECH Amendment, it is subject to the HIPAA Privacy and Security Rules in a similar manner as the rules apply to Plan. As a result, Business Associate agrees to take all actions necessary to comply with the HIPAA Privacy and Security Rules for business associates as revised by the HITECH Amendment. Business Associate agrees to the following in connection with the breach notification requirements of the HITECH Amendment:

1.1 If Business Associate discovers a breach of unsecured PHI, as those terms are defined by 45 CFR 164.402, Business Associate shall notify Plan without unreasonable delay and within 5 calendar days after discovery. For breaches with potential for a significant beneficiary harm (i.e., a high likelihood that the information was used inappropriately) or situations that may have heightened public or media scrutiny (i.e. a higher number of beneficiaries affected or particularly egregious breaches), Business Associate will report to Plan within 24 hours of learning of breaches that fall in these categories or at the time of reporting may appear to fall into these categories. For this purpose, discovery means the first day on which the breach is known to Business Associate or by exercising reasonable diligence would have been known to Business Associate. Business Associate shall be deemed to have knowledge of a breach if the breach is known or by exercising reasonable diligence would have been known to any person, other than the person committing the breach, who is an employee, officer, subcontractor or other agent of Business Associate. The notification must include identification of each individual whose unsecured PHI has been, or is reasonably believed to have been breached, and any other available information in Business Associate's possession which the Plan is required to include in the individual notice contemplated by 45 CFR 164.404.

1.2 Notwithstanding the immediately preceding paragraph, Business Associate shall assume the individual notice obligation specified in 45 CFR 164.404 on behalf of Plan where a breach of unsecured PHI was committed by Business Associate or its employee, officer, subcontractor or other agent of Business Associate or is within the unique knowledge of Business Associate as opposed to Plan. In such case, Business Associate will prepare the notice and shall provide it to Plan for review and approval at least 5 calendar days before it is required to be sent to the affected individual(s). Plan shall promptly review the notice and shall not unreasonably withhold its approval.

1.3 Further, where a breach involves more than 500 individuals and was committed by the Business Associate or its employee, officer, subcontractor or other agent or is within the unique knowledge of Business Associate as opposed to Plan, Business

Associate shall provide notice to the media pursuant to 45 CFR 164.406. Again, Business Associate will prepare the notice and shall provide it to Plan for review and approval at least 5 calendar days before it is required to be sent to the media. Plan shall promptly review the notice and shall not unreasonably withhold its approval.

1.4 Business Associate shall maintain a log of breaches of unsecured PHI with respect to Plan and shall submit the log to Plan within 30 calendar days following the end of each calendar year so that the Plan may report breaches to the Secretary in accordance with 45 CFR 164.408. This requirement shall take effect with respect to breaches occurring on or after September 23, 2009.

(q) Business Associate acknowledges that, effective the later of the Effective Date of this Agreement or February 17, 2010, it shall be liable under the civil and criminal enforcement penalty provisions as set forth at 42 U.S.C. 1320d-5 and 1320d-6, as amended from time to time, for failure to comply with the use and disclosure requirements of this Agreement, or failure to comply with the with safeguard, policies and procedures requirements and any guidance issued by the Secretary from time to time with such requirements.

3.2 Responsibilities of Plan. With regard to the use and/or disclosure of Protected Health Information by Business Associate, Plan hereby agrees to:

(a) Provide Business Associate with a copy of the notice of privacy practices (the "Notice") that Plan provides to Individuals pursuant to 45 C.F.R. § 164.520, as well as any changes in Notice;

(b) Inform Business Associate of any changes in, or revocation of, the consent or authorization provided to Plan by an Individual to use Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures; and

(c) Notify Business Associate, in writing and in a timely manner, of any restriction to the use and/or disclosure of Protected Health Information that Plan agreed to as provided for in 45 C.F.R. § 164.522.

#### **4. Mutual Representation and Warranty.**

Each party hereto represents and warrants to the other party hereto that all of its employees, agents, representatives and members of its work force, whose services may be used to fulfill obligations under this Agreement, are or shall be appropriately informed of the terms of this Agreement and are under legal obligation to fully comply with all provisions of this Agreement.

#### **5. Term and Termination.**

5.1 Term. This Agreement shall become effective on the Effective Date, and shall terminate when all of the Protected Health Information provided by Plan to Business Associate, or created or received by Business Associate on behalf of Plan, is destroyed or returned to Plan, or, if it is infeasible to return or destroy the Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section 5.

5.2 Termination. As provided for under 45 C.F.R. § 164.504(e)(2)(iii), Plan may immediately terminate this Agreement and any related agreement if it determines that Business Associate has breached a material term of this Agreement. Alternatively, Plan may choose to: (i) provide Business Associate with fifteen (15) calendar days written notice of the existence of an alleged material breach; and (ii) afford Business Associate an opportunity to cure such alleged material breach within the fifteen (15) day period upon mutually agreeable terms. Failure to cure in the manner set forth in this Section 5.2 is grounds for the immediate termination by Plan of this Agreement. Business Associate's obligation to comply with Section 3.1(p) of this Agreement shall be subject to the "notice-and-cure" period described above. This Agreement will automatically terminate without any further action of the parties upon the termination or expiration of the Service Agreement.

5.3 Effect of Termination.

(a) Except as provided in paragraph (b) of this Section 5.3, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Plan, or created or received by Business Associate on behalf of Covered Entity, that the business associate still maintains in any form. 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 or back-up tapes of the Protected Health Information.

(b) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Plan written notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties hereto 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, which shall be for a period of six years.

(c) In the event that it is infeasible for Business Associate to obtain from a subcontractor or agent any Protected Health Information in the possession of the subcontractor or agent, Business Associate shall provide to Plan written notification of the conditions of such infeasibility and require the subcontractor or agent to agree to extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures by the subcontractor or agent of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as the subcontractor or agent maintains such Protected Health Information.

(d) The respective rights and obligations of Business Associate and Plan under Sections 5.3, 6, 7.2, 7.3, and 7.4 shall survive the termination of this Agreement indefinitely.

## **6. Indemnification.**

The parties hereto agree to indemnify, defend and hold harmless each other and each other's respective employees, directors, officers, subcontractors, agents or other members of its workforce (each of the foregoing hereinafter referred to as "indemnified party") against all actual and direct losses suffered by the indemnified party and all liability to third parties arising from or in connection with any breach of this Agreement or of any warranty hereunder or from any negligence or wrongful acts or omissions, including failure to perform its obligations under the HIPAA Regulations, by the indemnifying party or its employees, directors, officers, subcontractors, agents or other members of its workforce. Accordingly, on demand, the indemnifying party shall reimburse any indemnified party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any indemnified party by reason of any suit, claim, action, proceeding or demand by any third party which results from the indemnifying party's breach hereunder. The obligation of the parties hereto to indemnify any indemnified party shall survive the expiration or termination of this Agreement for any reason.

## **7. Miscellaneous**

7.1 Notices. Any notices required or permitted to be given hereunder by any party to the other shall be in writing and shall be deemed delivered upon personal delivery; twenty-four (24) hours following deposit with a courier for overnight delivery; or seventy-two (72) hours following deposit in the U.S. Mail, registered or certified mail, postage prepaid, return-receipt requested, addressed to the parties at the following addresses or to such other addresses as the parties may specify in writing:

If to Plan: Central Health Plan of California, Inc.  
1540 Bridgegate Drive  
Diamond Bar, CA 91765  
Attention: Chief Executive Officer

If to Business Associate: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

7.3 Venue. In the event of any litigation under this Agreement, the parties agree that the venue for such litigation shall be the County of Los Angeles in the State of California.

7.4 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor anything herein shall confer, upon any person other than the parties hereto any rights, remedies, obligations, or liabilities whatsoever.

7.5 Regulation References. A reference in this Agreement to a section in the HIPAA Regulations means the section as in effect or as amended, and for which compliance is required.

7.6 Amendment. The parties agree to take such action to amend this Amendment from time-to-time as is necessary for Plan to comply with the requirements of HIPAA and the HIPAA Regulations.

7.7 Enforcement. In the event that either party hereto shall be required to enforce the terms of this Agreement, whether with or without arbitration, each party shall be financially responsible for their own costs associated with such action or procedure.

7.8 Entire Agreement; Modification. This Agreement shall constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the parties hereto relating to such subject matter.

7.9 Severability. In the event any provision of this Agreement is held to be unenforceable or void for any reason, the remainder of the Agreement shall be unaffected and shall remain in full force and effect in accordance with its terms, unless such unenforceability or voidness defeats an essential business term hereof.

7.10 Waivers. A waiver by either party of a breach or failure to perform hereunder shall not constitute a waiver of any subsequent breach or failure.

7.11 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Plan to comply with the HIPAA Regulations.

7.12 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same agreement.

7.13 Survival. The respective rights and obligations of Business Associate under Section 5.3 of this Agreement shall survive the termination of this Agreement.

7.14 Successors. This Agreement is binding on each party's legal successors.