



## BUSINESS ASSOCIATE AGREEMENT

This agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between Capital Health Plan, Inc., a Florida corporation not for profit (“CHP”), and \_\_\_\_\_ (“Business Associate”).

### RECITALS

1. CHP operates a health maintenance organization and, as a “covered entity,” is subject to the requirements of federal law, particularly the privacy and security regulations enacted under the Health Insurance Portability and Accountability Act (“Privacy Rule” and “Security Rule”) with respect to maintaining the confidentiality of its members’ protected health information.

2. Business Associate is engaged to render Group Health Plan services to CHP (“Services”) as and when requested by CHP’s management, and is a “business associate” as defined in the Privacy Rule and the Security Rule. From time to time it may be necessary to the rendition of such services that Business Associate have access to protected health information relating to CHP members.

3. The parties wish to enter into this agreement as a matter of good practice and to comply with federal law.

### STATEMENT OF AGREEMENT

NOW THEREFORE, in consideration of the mutual promises in this Agreement, the parties agree as follows:

#### SECTION 1. *Definitions.*

As used in this Agreement, the following terms shall have the meanings set forth below. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule and the Security Rule.

a. ***Business Associate.*** “Business Associate” shall mean

\_\_\_\_\_.

b. ***Breach.*** “Breach” shall have the same meaning as the term “breach” in Sections 13400(1) and 13402 of the HITECH Act and 45 CFR §164.402.

c. ***Covered Entity.*** “Covered Entity” shall mean CHP.

d. ***HITECH Act.*** “HITECH Act” shall mean the Health Information Technology for Economic and Clinical Health Act, enacted as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, P.L. 111-5. All references in this Agreement to such Act or to any section thereof shall be deemed to include all applicable regulations and guidance as may be promulgated or issued, respectively, to implement such Act.

e. ***Individual.*** “Individual” shall have the same meaning as the term “individual” in 45 CFR §§160.103 and 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

f. ***Privacy Rule.*** “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E as in effect on the date of this agreement and as subsequently amended.

g. ***Security Rule.*** “Security Rule” shall mean the Standards for the Protection of Electronic Protected Health Information, 45 CFR Part 160 and 164, Subparts A and C, as in effect on the date of this agreement and as subsequently amended.

h. ***Security Incident.*** “Security Incident” shall have the same meaning as the term “security incident” as used in 45 CFR §164.304.

i. ***Protected Health Information.*** “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 CFR §§160.103 and 164.501, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of CHP, and includes Electronic Protected Health Information.

j. ***Electronic Protected Health Information.*** “Electronic Protected Health Information” shall have the same meaning as “electronic protected health information” in 45 CFR §§160.103 and 164.501, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of CHP.

k. ***Safeguards.*** The terms “Administrative Safeguards,” “Technical Safeguards,” and “Physical Safeguards” shall have the same meaning as those terms in 45 CFR §164.304.

l. ***Required By Law.*** “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR §164.501.

m. ***Secretary.*** “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.

n. ***Subcontractor.*** “Subcontractor” shall have the same meaning as the term “subcontractor” in 45 CFR §160.103.

## **SECTION 2. *Obligations and Activities of Business Associate***

Business Associate agrees to the following:

a. ***Not to Use or Disclose PHI Unless Permitted or Required.*** Business Associate agrees to not request, use, or disclose Protected Health Information other than as permitted or required by the Agreement, or as Required By Law, or as otherwise authorized by CHP. Business Associate may use or disclose Protected Health Information only if such use or disclosure, respectively, (i) is in full compliance with each applicable requirement of Section 164.504(e) of Title 45, Code of Federal Regulations, and (ii) would not violate the Privacy Rule if made by CHP.

b. ***Use Safeguards.*** Business Associate agrees to use appropriate safeguards, as required by the Privacy Rule, to prevent use or disclosure of the Protected Health Information

other than as provided for by this Agreement. Business Associate will implement Administrative Safeguards, Technical Safeguards, and Physical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on behalf of CHP. Without limiting the generality of the foregoing, Business Associate shall implement reasonable and appropriate policies and procedures to comply with, and shall comply with, the provisions of the Security Rule made applicable to Business Associate by the HITECH Act, including without limitation 45 CFR §§164.308, 164.310, 164.312, and 164.316.

c. ***Mitigate Harmful Effects.*** 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 Agreement.

d. ***Report Unpermitted Uses and Disclosures of PHI.*** Business Associate agrees to report to CHP, without unreasonable delay, (i) any use or disclosure of the Protected Health Information not provided for by this Agreement, and (ii) any pattern of activity or practice of any of Business Associate's agents or subcontractors that constitutes a material breach of Business Associate's obligations under this Agreement, of which it becomes aware. Business Associate also agrees to report to CHP, without unreasonable delay, any Security Incident of which Business Associate becomes aware. Without limiting the generality of the foregoing, Business Associate shall notify CHP of any Breach as required by Sections 13402 and 13407 of the HITECH Act and by 45 CFR Part 164 Subpart D; provided, however, that such notification to CHP shall be made immediately upon Business Associate's discovery of such Breach. Business Associate shall also consult and cooperate with CHP with respect to Business Associate's investigation of any Breach. Business Associate, in compliance with Section 13404(b) of the HITECH Act, shall comply with 45 CFR §164.504(e)(1)(ii), by acting as required by that section with respect to any pattern of activity or practice of CHP that constitutes a material breach of CHP's obligations as a covered entity with respect to Protected Health Information.

e. ***Compliance of Subcontractors.*** Business Associate agrees to ensure that any Subcontractor that receives, creates, maintains, or transmits Protected Health Information from or on behalf of Business Associate implements reasonable and appropriate policies, procedures, and safeguards consistent with the Privacy Rule and the Security Rule, to protect the confidentiality, integrity, and availability of Protected Health Information, and agrees in writing to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

f. ***Provide Access.*** Business Associate agrees to provide access, during normal business hours, to Protected Health Information in a Designated Record Set of CHP to CHP in order to meet the requirements of 45 CFR §164.524, provided CHP delivers written notice to Business Associate, at least five business days in advance, requesting such access. Business Associate shall, if requested, provide access in the form of an electronic copy of any such Protected Health Information maintained as an electronic health record, as required by Section 13405(e) of the HITECH Act. This provision does not apply if Business Associate and its employees, subcontractors, and agents have no Protected Health Information in a Designated Record Set of CHP or if the Protected Health Information held by Business Associate merely duplicates information held by CHP.

g. ***Incorporate Amendments.*** Business Associate agrees to incorporate any amendment(s) to Protected Health Information in a Designated Record Set of CHP that CHP directs pursuant to 45 CFR §164.526. This provision does not apply if Business Associate and its employees, subcontractors, and agents have no Protected Health Information in a Designated

Record Set of CHP or if the Protected Health Information held by Business Associate merely duplicates information held by CHP.

h. ***Disclose Practices, Books, and Records.*** Unless otherwise protected or prohibited from discovery or disclosure by law, Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information created, received, maintained, or transmitted by Business Associate from or on behalf of CHP available to the Secretary, upon reasonable notice, for purposes of the Secretary determining CHP's compliance with the Privacy Rule or the Security Rule. Business Associate shall have a reasonable time within which to comply with requests for such access and in no case shall access be required in less than five business days after Business Associate's receipt of such request, unless otherwise designated by the Secretary.

i. ***Document Disclosures.*** Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for CHP or Business Associate to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 13405 of the HITCECH Act and 45 CFR §164.528. To that end, unless otherwise protected or prohibited from discovery or disclosure by law, Business Associate agrees to provide to CHP or directly to an Individual, as directed by CHP pursuant to Section 13405(c)(3) of the HITECH Act, upon reasonable notice, information thus collected, to respond, or to permit CHP to respond, to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 13405 of the HITCECH Act and 45 CFR §164.528. If Business Associate receives any request for access, amendment, accounting of disclosure, or other similar request directly from an Individual, Business Associate will promptly notify CHP of such request.

j. ***Restrictions on Disclosures.*** If Business Associate receives from any Individual a request to restrict uses or disclosures of an Individual's Protected Health Information, Business Associate will promptly notify CHP of such request. Business Associate will comply with directions from CHP to restrict the use or disclosure of Protected Health Information for an Individual if CHP advises Business Associate that CHP must comply with such restrictions as required by Section 13405 of the HITECH Act and 45 CFR §164.522(a)(1)(vi).

k. ***No Remuneration.*** Except (i) when specifically authorized in writing, in advance, by CHP, or (ii) to provide an individual a copy of that individual's Protected Health Information pursuant to 45 CFR §164.524, at no more than actual cost, Business Associate shall receive no remuneration, directly or indirectly, in exchange for any Protected Health Information of an individual.

l. ***Delegated Functions.*** To the extent Business Associate is to carry out one or more of CHP's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to CHP in the performance of such obligation(s).

m. ***Hold Harmless.*** Business Associate shall indemnify CHP and hold CHP harmless for and from any loss or liability, including without limitation civil money penalties, suffered or incurred by CHP, in the event CHP becomes vicariously liable for the actions or inactions of Business Associate in the circumstance described by 45 CFR §160.402(c)(1), and without any fault on the part of CHP. This provision shall not be construed or interpreted to limit any other duty or liability Business Associate may have to CHP under applicable law.

### **SECTION 3. *Permitted Uses and Disclosures by Business Associate***

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information in the course of providing Services to CHP, if such use or disclosure of Protected Health Information would not violate the Privacy Rule or the Security Rule or other applicable law if done by CHP, or violate policies and procedures of the CHP requiring Protected Health Information to be disclosed only to the minimum necessary extent. CHP shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule or the Security Rule if done by CHP. All requests, uses, and disclosures by Business Associate for or of Protected Health Information shall be the minimum necessary to accomplish the intended purpose of such request, use, or disclosure in accordance with Section 13405(b) of the HITECH Act and 45 CFR §164.502(b)(1). Business Associate shall develop and implement internal policies, procedures, and protocols that are consistent with the requirements of 45 CFR §164.512(d), in order to limit its requests for, and its use and disclosure of, PHI to the minimum necessary to accomplish the intended purpose of such request, use, or disclosure.

#### **SECTION 4. *Obligations of CHP***

- a. ***Notice of Privacy Practices.*** CHP shall notify Business Associate of any limitation(s) in its notice of privacy practices of CHP in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- b. ***Notice of Changes in Permission.*** CHP shall notify Business Associate of any changes in, or revocation of, permission by 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.
- c. ***Notice of Other Restrictions.*** CHP shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that CHP is required to honor pursuant to the HITECH Act, or that CHP 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.

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

- a. ***Term.*** The Term of this Agreement shall be effective as of April 14, 2003, or the date upon which Business Associate is first engaged to provide Services to CHP, whichever is later, and shall terminate when all of the Protected Health Information created, received, or maintained by Business Associate from or on behalf of CHP, is destroyed or returned to CHP, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- b. ***Termination for Cause.*** Upon CHP's reasonable determination of a material violation of this agreement by Business Associate, CHP shall give written notice of such violation to Business Associate and either:
  - i. Provide an opportunity for Business Associate to cure or end the violation, as appropriate in CHP's reasonable judgment, and terminate this Agreement if Business Associate does not cure or end the violation within the time specified by CHP;
  - ii. Immediately terminate this Agreement if Business Associate has violated a material term of this Agreement, termination is feasible, and cure is not possible.

c. ***Effect of Termination.***

i. Except as provided in paragraph (c)(ii) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information created, received, or maintained by Business Associate from or on behalf of CHP. 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.

ii. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to CHP notification of the conditions that make return or destruction infeasible. Upon notice 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.

iii. Termination of this Agreement because of Business Associate's material, uncured breach shall constitute grounds for CHP to terminate, without liability to Business Associate by reason of such termination, the underlying business relationship, including any contract, between CHP and Business Associate.

**SECTION 6. *Miscellaneous***

a. ***Regulatory References.*** A reference in this Agreement to a section in the Privacy Rule or the Security Rule means the section as in effect or as amended.

b. ***Amendment.*** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for CHP to comply with the requirements of the Privacy Rule, the Security Rule, the HITECH Act, and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, as they may be amended from time to time.

c. ***Survival.*** The respective rights and obligations of Business Associate under Section 5(c) of this Agreement shall survive the termination of this Agreement.

d. ***Interpretation.*** Any ambiguity in this Agreement shall be resolved to permit CHP to comply with the Privacy Rule, the Security Rule, and other applicable law governing the privacy and security of health information. IN WITNESS WHEREOF, the parties have executed and delivered this Agreement on the date first above written.

CAPITAL HEALTH PLAN, INC.

\_\_\_\_\_  
(Business Associate)

BY: \_\_\_\_\_  
Kathleen A. Jugenheimer

BY: \_\_\_\_\_

As its: Compliance/Privacy Officer

As its: \_\_\_\_\_

**Email Address:**

**Email Address:**

kajugenheimer@chp.org

\_\_\_\_\_

**Mailing Address:**

Capital Health Plan  
P.O. Box 15349  
Tallahassee, FL 32317

**Mailing Address:**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
P.O. Box

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

Approved Compliance Committee original 4/2002, Revised 2/25/05, Revised 8/25/09, Reviewed 5/17/2011, Revised 2/19/13