



BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “Agreement”) is entered into between HealthBenefitApp LLC (the “Business Associate”) and Benefits Administrator and its affiliated companies (“Benefits Administrator”), effective, except as otherwise provided in this Agreement, as of _____ Effective Date.

The parties wish to enter into this Agreement to provide for the confidentiality, security and availability of certain Protected Health Information that may be received by the Business Associate from or on behalf of Benefits Administrator or its clients. This Agreement is intended to provide that such protected health information will be used or disclosed by the Business Associate only in a manner that is consistent with the applicable provisions of federal regulations (the “Administrative Simplification Regulations”) issued pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and this Agreement shall be interpreted accordingly. This Agreement also is intended to satisfy certain requirements of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), included in the American Recovery and Reinvestment Act of 2009 (“ARRA”), when and as they become applicable to Business Associate or Benefits Administrator or its clients and this Agreement shall be interpreted accordingly.

Although Benefits Administrator generally will not be acting as a covered entity (as described in the Administrative Simplification Regulations) with respect to the services covered by this Agreement, Benefits Administrator is a business associate (as defined in the Administrative Simplification Regulations) of other covered entities and has entered into business associate agreements, similar to this Agreement, with those clients. Those business associate agreements impose many of the requirements of the Administrative Simplification Regulations (and the HITECH Act, as its requirements become effective) on Benefits Administrator. In addition, effective February 17, 2010 (or earlier, for some requirements), Benefits Administrator, when acting as a business associate of its client’s health plans will be directly subject to many of the requirements of those Regulations. This Agreement therefore is intended to impose requirements similar to those that apply to Benefits Administrator on the Business Associate and the parties enter into the Agreement with that intention.

ARTICLE 1 **DEFINITIONS**

The following terms, for purposes of this Agreement, have the meanings indicated, unless the context clearly requires otherwise:

- 1.1 Business Associate means HealthBenefitApp LLC.
- 1.2 Breach has the same meaning as the term “breach” under 45 CFR Section 164.402.
- 1.3 Covered Entity means a covered entity (as described in 45 CFR Section 160.102 (a)) for which Benefits Administrator receives, creates or discloses information that is Protected



Health Information with respect to the Covered Entity pursuant to a general services agreement between Benefits Administrator and the Covered Entity.

1.4 Electronic Health Record has the same meaning that applies under Section 13400(5) of ARRA and currently 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 Individual has the same meaning as the term “individual” in 45 CFR Section 160.103 and includes a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(g).

1.6 Privacy Rule means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

1.7 Protected Health Information or PHI means information that qualifies as protected health information under 45 CFR Section 160.103 with respect to Covered Entity.

1.8 Required By Law has the meaning set forth in 45 CFR Section 164.103.

1.9 Secretary means the Secretary of the Department of Health and Human Services or his or her designee.

1.10 Security Standards means the federal regulations issued as Health Insurance Reform: Security Standards and codified at 45 CFR parts 160, 162 and 164.

1.11 Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, but only to the extent that the incident involves electronic PHI.

1.12 Unsecured Protected Health Information has the same meaning as that term has under 45 CFR Section 164.402, but limited to information that is accessed, maintained, retained, modified, recorded, stored, destroyed or otherwise held, used or disclosed by Business Associate on behalf of Covered Entity.

1.13 Terms used, but not otherwise defined, in this Agreement have the same meaning as those terms have in 45 CFR Sections 160.103, 164.103, 164.304 and 164.501 or in Section 13400 of ARRA.

ARTICLE 2 OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

2.1 Business Associate agrees it will not use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law.



2.2 Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.

2.3 Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

2.4 Business Associate agrees to report to Benefits Administrator any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware.

2.5 Business Associate agrees to ensure that any agent, including a subcontractor, that creates, receives, maintains or transmits PHI on behalf of Business Associate, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to that information by entering into an agreement with the subcontractor or other agent that satisfies the requirements of 45 CFR Section 164.504(e)(5). To the extent that a subcontractor or other agent of Business Associate creates, receives, maintains or transmits electronic PHI on behalf of Business Associate, Business Associate will ensure that the subcontractor or agent agrees to comply with the applicable requirements of the Security Standards by entering into an agreement that complies with 45 CFR Section 164.314.

2.6 If Business Associate has PHI in a Designated Record Set, Business Associate agrees to provide access, at the request of Benefits Administrator, and in the time and manner designated by Benefits Administrator, to such PHI, to Benefits Administrator or, as directed by Benefits Administrator, to an Individual, in order to meet the requirements under 45 CFR Section 164.524.

2.7 To the extent reasonably necessary for Covered Entity to comply with 45 CFR Section 164.524(c)(2), if Business Associate maintains PHI in an electronic format for any Individual, Business Associate agrees to provide, at the request of an Individual, and in the time and manner designated by the Individual, a copy of such information in the electronic format designated by the Individual to that Individual or, if clearly, conspicuously and specifically directed by the Individual to transmit an electronic copy of that information directly to an entity or person designated by the Individual. If electronic information described in the preceding sentence is not readily producible in the form and format requested by the Individual, it will be provided in a readable electronic form and format as agreed to by Business Associate and the individual, or, if no agreement is reached in a hard copy format. Any fee charged by Business Associate to the Individual for providing such information (or a summary or explanation of such information) cannot exceed the amount described in 45 CFR Section 164.524(c)(4). Except as otherwise expressly provided in this Section 2.7, any information provided pursuant to this Section will comply with the requirements of 45 CFR Section 164.524 as they apply to Covered Entity. If a request described in this Section 2.7 is made by the Individual to Covered Entity instead of Business Associate, Business Associate agrees to work with Covered Entity to allow Covered Entity to respond to the request in accordance with Section 164.524.

2.8 If Business Associate has PHI in a Designated Record Set, Business Associate



agrees to make any amendment to such information that Benefits Administrator or a Covered Entity directs or agrees to pursuant to 45 CFR Section 164.526 at the request of Benefits Administrator or an Individual, and in the time and manner designated by Benefits Administrator.

2.9 Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Benefits Administrator or a Covered Entity available to Benefits Administrator, or at the request of Benefits Administrator to the Secretary, in a time and manner designated by Benefits Administrator or the Secretary, for purposes of the Secretary determining a Covered Entity's or AP Benefit Advisor's compliance with the Privacy Rule.

2.10 Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528. In addition, effective beginning on the date the requirements of regulations issued pursuant to Section 13405(c) of ARRA become applicable to Covered Entity, if Business Associate maintains information in an electronic format, to the extent necessary for Covered Entity to comply with ARRA Section 13405(c) and applicable regulations, Business Associate agrees to document access to and disclosures of PHI in electronic form, including applicable disclosures for payment, treatment or health care operation purposes and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528, as modified in accordance with ARRA Section 13405(c).

Business Associate agrees to provide to Covered Entity or an Individual, in a reasonable time and manner designated by Covered Entity, information collected in accordance with this Section 2.10, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.

2.11 In conducting any electronic transaction that is subject to the Electronic Transaction Regulations on behalf of Benefits Administrator or a Covered Entity, Business Associate agrees to comply with all requirements of the Electronic Transaction Regulations that would apply to the Covered Entity if the Covered Entity were conducting the transaction itself.

2.12 To the extent that Business Associate creates, receives, maintains or transmits electronic PHI on behalf of Benefits Administrator or a Covered Entity, Business Associate agrees to maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of all electronic PHI and to otherwise comply with applicable requirements of the Security Standards..

2.13 To the extent that Business Associate creates, receives, maintains or transmits electronic PHI on behalf of Covered Entity, Business Associate agrees to report to Covered Entity any Security Incident of which it becomes aware. For any successful Security Incident, i.e. any Security Incident that results in the unauthorized access, use, disclosure, modification, or destruction of



electronic PHI or interference with system operations on an information system on which electronic PHI is maintained, the report will be provided without unreasonable delay and in no event later than ten days after Business Associate becomes aware of the incident.

For any unsuccessful Security Incidents (i.e., all Security Incidents not described in the previous paragraph), following a written request by Covered Entity, Business Associate will promptly provide to Covered Entity a report summarizing all such previously unreported incidents. Also, no later than the next January 31 following the end of each calendar year, Business Associate will provide to Covered Entity a written report summarizing all unsuccessful Security Incidents that have not previously been reported to Covered Entity. Unsuccessful Security Incidents include but are not limited to pings on the Business Associate's firewall, port scans, attempts to log onto a system or enter a database with an invalid password or username, denial-of-service attacks that do not result in the system being taken off-line, or malware such as worms or viruses and similar failed attempts to access systems that include electronic PHI.

For successful Security Incidents, each incident report will:

1. Identify each individual whose PHI is known to have been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed during the incident;
2. Identify the nature of the non-permitted access, use, or disclosure and the date of the incident and the date of discovery;
3. Identify the PHI accessed, used, or disclosed;
4. Identify who made the non-permitted access, use, or received the non-permitted disclosure;
5. Identify any corrective action Business Associate has taken or will take to prevent similar Security Incidents in the future;
6. Identify any actions Business Associate has taken or will take to mitigate any harmful effects of the Security Incident; and
7. Provide such other information, as Covered Entity may reasonably request.

To the extent that any of the above information is not available to be included in the Security Incident report, the report must include an explanation of why such information is not available to Business Associate.

For unsuccessful Security Incidents, each annual or requested incident report will summarize the types and number of occurrences or frequency of unsuccessful Security Incidents; will indicate whether Business Associate believes its current security measures are adequate to address all unsuccessful Security Incidents, given the scope and nature of such attempts; and if existing security measures are not adequate, the report will describe the measures Business



Associate will implement to address the security inadequacies. Notwithstanding the preceding, to the extent that the parties agree that no report of an unsuccessful Security Incident (or of specific types of unsuccessful Security Incidents) is required under applicable law, no such report will be required under this Agreement.

2.14 To the extent that Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses or discloses Unsecured Protected Health Information on behalf of Covered Entity, Business Associate agrees to notify Covered Entity of any Breach of such information. Such notification will comply with 45 CFR Section 164.410 including, to the extent possible, identifying each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired or disclosed during the Breach. In addition, the notice described in the preceding sentence will include all information that is reasonably available to Business Associate that Covered Entity would reasonably be expected to need to fulfill its legal obligations with respect to the Breach, including the information required to be provided in a report of a successful Security Incident as described in this Agreement. If additional information described in the preceding sentence becomes available after the original notice is provided to Covered Entity, Business Associate agrees to promptly provide the additional information to Covered Entity as it becomes available.

2.15 To the extent that Business Associate agrees, under the terms of this Agreement or a general services agreement or otherwise, to carry out any obligation that the Covered Entity may have under the Privacy Rule at 45 CFR part 164, subpart E, Business Associate agrees to comply with the requirements of subpart E that would apply to Covered Entity in performing that obligation.

ARTICLE 3

PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

3.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Benefits Administrator or a Covered Entity, as specified in the general service agreement between Business Associate and Benefits Administrator, provided that such use or disclosure would not violate the Privacy Rule, Security Standards or the HITECH Act if done by a Covered Entity.

3.2 Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

3.3 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable 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.

3.4 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Benefits Administrator or Covered Entity as permitted by 42 CFR Section 164.504(e)(2)(i)(B).

3.5 Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 42 CFR Section 164.502(j)(1).

ARTICLE 4 OBLIGATIONS OF BENEFITS ADMINISTRATOR

4.1 Benefits Administrator shall notify Business Associate of any limitation (that is known to Benefits Administrator) in a Covered Entity's notice of privacy practices that a Covered Entity produces in accordance with 45 CFR Section 164.520, to the extent that that limitation may affect Business Associate's permitted or required uses and disclosures.

4.2 Benefits Administrator shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, if Benefits Administrator is aware of those changes and those changes affect Business Associate's permitted or required uses and disclosures.

4.3 Benefits Administrator shall notify Business Associate of any restriction on the use or disclosure of PHI that Benefits Administrator or Covered Entity (with the knowledge of Benefits Administrator) has agreed to in accordance with 45 CFR Section 164.522.

ARTICLE 5 PERMISSIBLE REQUESTS BY BENEFITS ADMINISTRATOR

5.1 Except as permitted under Sections 3.2, 3.3 or 3.4 of this Agreement, Benefits Administrator shall not request that Business Associate use or disclose PHI in any manner that would not be permitted under the Privacy Rule, the Security Standards or the HITECH Act if done by a Covered Entity, unless such use or disclosure is otherwise permitted under the Privacy Rule, the Security Standards or the HITECH Act if done by the Business Associate on behalf of Benefits Administrator or a Covered Entity and is consistent with the requirements of the general services agreement between Benefits Administrator and Business Associate.

ARTICLE 6 TERM AND TERMINATION

6.1 Term. This Agreement is effective beginning upon the Effective Date indicated in the first paragraph on page 1, above, and shall terminate when all of the PHI provided by Benefits Administrator or a Covered Entity to Business Associate, or created or received by Business Associate on behalf of Benefits Administrator or a Covered Entity, is destroyed or returned to



Benefits Administrator or to the applicable Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

6.2 Termination for Cause. If Benefits Administrator becomes aware of a material breach of this Agreement by Business Associate, Benefits Administrator shall (1) provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement (and any applicable portion of a general services agreement between the parties) if Business Associate does not cure the breach or end the violation within the time specified by Benefits Administrator, or (2) immediately terminate this Agreement (and any applicable portion of a general services agreement between the parties) if Business Associate has breached a material term of this Agreement and cure is not possible. .

6.3 Effect of Termination.

(a) Except as provided in paragraph (b) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Benefits Administrator or from a Covered Entity, or created or received by Business Associate on behalf of Benefits Administrator or a Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(b) If Business Associate determines that returning or destroying PHI is infeasible, Business Associate will inform Benefits Administrator of the conditions that make return or destruction infeasible and, upon mutual agreement of the Parties that return or destruction of PHI is 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.

ARTICLE 7
MISCELLANEOUS

7.1 Regulatory and Statutory References. A reference in this Agreement to a regulation or a statute means that regulation or statute as in effect and as amended at the time of reference and as interpreted pursuant to any applicable guidance provided by the Secretary or other responsible regulatory authority and any applicable case law.

7.2 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for (1) a Covered Entity to comply with the requirements of the Administrative Simplification provisions of HIPAA or the HITECH Act, and of the regulations issued pursuant to those laws or (2) for Benefits Administrator to comply with the requirements of a business associate agreement with a Covered Entity. The Parties may agree to amend this Agreement from time to time in any other respect as they deem appropriate. This Agreement shall not be amended except by written instrument executed by Benefits Administrator and Business Associate.



7.3 Survival. The respective rights and obligations of Business Associate under Section 6.3 of this Agreement shall survive the termination of this Agreement.

7.4 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits a Covered Entity to comply with with applicable requirements of the HIPAA Administrative Simplification regulations and with the applicable requirements of the HITECH Act. Also, nothing in this Agreement shall be construed to require either Benefits Administrator or Business Associate to violate its obligations to comply with any requirements of the Privacy Rule or the Security Standards that apply directly to Benefits Administrator or Business Associate.

7.5 Effective Date. Notwithstanding any other provision of this Agreement, Business Associate shall not be required to comply with any obligation imposed on it by this Agreement which is intended to provide for a Covered Entity's compliance with a requirement of the Administrative Simplification Regulations or the HITECH Act or regulations or other guidance issued pursuant to the HITECH Act until the earlier of (1) the date on which the Covered Entity, Benefits Administrator or Business Associate is first required to comply with that requirement or (2) the date on which that obligation is imposed on Benefits Administrator by a business associate agreement.

7.6 Relationship of Parties. None of the provisions of this Agreement are intended to create or shall be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other Arrangement between the Parties.

7.7 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person or entity other than Benefits Administrator, Business Associate and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.

7.8 Successors and Assigns. This Agreement shall be binding on the parties and their successors, but neither party may assign the Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.

7.9 Waiver. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any occasion.

7.10 Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect.

7.11 Notice. Any notice to the other party pursuant to this Agreement shall be deemed provided if sent by first class United States mail, postage prepaid, as follows:



To Benefits Administrator: Benefits Administrator

To Business Associate: _____ Chief Executive Officer
HealthBenefitApp LLC
3355 Keswick Road, Suite 105
Baltimore MD 21211

7.12 Indemnification.

- i. Business Associate shall indemnify and hold harmless Benefits Administrator from and against any and all losses, expense, damage or injury that Benefits Administrator may sustain as a result of, or arising out of a breach of this Agreement by Business Associate or its agents or subcontractors, including but not limited to any unauthorized use, disclosure, damage, or destruction of PHI.
- ii. Benefits Administrator shall indemnify and hold harmless Business Associate from and against any and all losses, expense, damage or injury that Business Associate may sustain as a result of, or arising out of a breach of this Agreement by Benefits Administrator or its agents or subcontractors, including but not limited to any unauthorized use, disclosure, damage, or destruction of PHI.

7.13 Entire Agreement. This Agreement sets forth the entire understanding of the Parties with respect to its subject matter and supersedes all prior agreements, arrangements and communications, whether oral or written, pertaining to the subject matter of this Agreement.

The parties have caused this Agreement to be executed by their authorized representatives.

BENEFITS ADMINISTRATOR

By: _____

Print Name: _____

Print Title: _____

Date: _____



BUSINESS ASSOCIATE, HealthBenefitApp LLC

By: _____

Print Name: _____

Print Title: _____

Date: _____