



Premium Only Plan Application

Please submit your completed Plan Application with enrollment fee to:

E-mail: newbusiness@tasconline.com Fax: 608-661-9638

Mail: C/O New Business
 2302 International Lane, Madison, WI 53704
 PO Box 14140, Madison WI 53708-0140

(1) EMPLOYER INFORMATION

Contact Name			
Company Name		E-mail (Required)	
Company Physical Address (not PO Box)		City/State/Zip	
Mailing Address (if different from Physical address)		City/State/Zip	
Phone Number		Fax Number	
Business Federal ID #		NAICS or SIC Code	
Tax Filing Status:	<input type="checkbox"/> C-Corp <input type="checkbox"/> S-Corp <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Non-Profit <input type="checkbox"/> LLC <input type="checkbox"/> Other:		
Nature of Business		Number of Employees	
Do you own an interest in any other business?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

(2) PARTICIPATION AND ELIGIBILITY REQUIREMENTS

Check eligibility and their respective maximums. If a category is checked but a maximum is not elected, it will default to the maximum.

- Part-time employees working at least ____ hours per week will be included (maximum of 30 hours).
- Seasonal employees working at least ____ months within a year will be included (maximum of 6 months).
- Employees reaching ____ years of age will be included (maximum 21 years).
- Employees meeting Probationary period of ____ months will be included (maximum 24 months).
- Members of bargaining unit will be included.
- **TASC FlexSystem first year administration** shall begin on the first day of _____ (mo/yr) and continue for _____ consecutive months. For the second and successive years, the Plan shall operate starting on the first day of _____ (mo/yr) and continue for the following successive twelve (12) month period.
- **Entry Date:** _____ (i.e., January 1 and July 1). An employee (other than a retired employee) is able to enter and participate in the Plan the first day of the Plan Year, or such dates within the Plan Year as noted below, and after they have met the eligibility requirements noted above.

(3) AVAILABLE BENEFITS

Select the benefits available to the eligible employee(s). (Check all that apply.) These benefits are taken through salary deductions.

- Medical or Medical-Related Premium (Group Sponsored - Employee and Family)
- Voluntary/Group Term Life Insurance Premium (Employee Only - Up to \$50,000 in death benefits)
- Disability Insurance Premium (Employee Only) - May eliminate pre-tax advantage of potential benefit payment.
- Supplemental Insurance (Employee and Family) - Includes cancer, hospital confinement, intensive care, accidental death and dismemberment.
- Health Savings Account (HSA): Plan Only (\$150 additional, first year only if Addendum is required).

(4) PAYMENT

“FREE” For the first year, \$125 renewal for the second year and every year thereafter.

(5) AUTHORIZATION

This Group Plan Application is a binding agreement between Total Administrative Services Corporation (“TASC”) and you and, if applicable, the company or other legal entity you represent (collectively, “you”). By signing this Group Plan Application, you accept the terms of the Service Level Agreement. If this Group Plan Application is for full Flex, HRA, and/or FMLA plan administration, you acknowledge receipt of the HIPAA business associate terms and conditions provided to you with this Group Plan Application (“Business Associate Agreement”), and you agree to be bound by the terms and conditions, as stated therein, of the Business Associate Agreement. A copy of the Business Associate Agreement must be returned with this completed Group Plan Application. Further, you, as plan sponsor and plan administrator, and on behalf of, the plan set forth in this Group Application, hereby appoint TASC and/or its subcontractors or agents to act as an authorized agent for purposes of receiving and/or retrieving electronic reports/responses (“Claim Feed Information”) from the insurance carrier(s) listed in this Group Application or otherwise identified by you on your behalf. TASC and/or its subcontractors or agents use and disclosure of Claim Feed Information shall be subject to the terms of the Business Associate Agreement. I have read, understand and agree to the terms and conditions stated in this Group Plan Application, the Service Level Agreement, and the Business Associate Agreement (if applicable), as attested by the signature below, effective on the date of the signature.

Employer (sign here) _____ Title _____ Date _____

I certify that the names listed below have HIPAA Business Associates Agreements with our company and are authorized to access information on our behalf.

Name	
Name	
Name	

HealthNet Broker Name	HealthNet	4600-0361-7522	Retail Code: HNIA
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Primary Account Representative of Broker/Agent Name:			
Email Address:		Phone:	
Physical Address:			

Service Level Agreement

SECTION I

THIS AGREEMENT, entered into by and between Total Administrative Services Corporation (the Administering Agent and hereby referred to as “Agent”) and the employer (the Plan Sponsor/Administrator and hereby referred to as the “Plan Sponsor”). This agreement becomes effective on the date of signature in the Plan Application. The services apply to the Plan as noted on the respective Plan Application. The terms of this agreement shall be in effect indefinitely and will be automatically renewable.

Services to be Provided by the Administering Agent

Under this agreement, the Agent will provide timely administration and management of the appropriate Plan as outlined in the appropriate product administration manual and/or materials. Agent will also provide support audit assistance under the terms of the Audit Guarantee.

Employer Responsibility as the Plan Sponsor/Administrator

Pursuant to this Agreement, the Plan Sponsor must present to the Agent in an accurate, complete and timely manner, all relevant and requested information allowing administrative functions to be performed. This may include, although not limited to enrollment and re-enrollment information, notification of employee and employer changes, payments relative to fees or funding as well as information and data necessary for testing, reporting and filing requirements.

Failure to meet deliverable expectations, including but not limited to those noted above and elsewhere in this agreement, in an accurate, complete and timely manner will result in a status of delinquency. Delinquency status will result in service interruptions and/or delays including, but not limited to claim processing reporting and filing which will be the liability of the Plan Sponsor. It is also the Plan Sponsor’s responsibility to educate and inform their participants on the services being provided including the delivery of administration materials (where needed) as well as compliance documents (exp. Summary Plan Description). The Plan Sponsor is responsible to execute and retain the Business Associate Agreement (where applicable) provided in the administration materials. The Plan Sponsor shall have the sole and final discretionary authority in respect to all legal and administrative functions of the Plan.

Terms of Payment

The Plan Sponsor agrees to pay the Agent for services provided under this Agreement in accordance with the fees determined on the Plan Application. Payment for services will occur via E-pay or invoices will generate 45 days prior to the Service Period and are due according to the terms on the Invoice. In addition to the fees determined on the Plan Application, all interest on plan funds shall be retained by TASC as a supplemental fee and such fees shall be considered earned at such time as any interest accrues on the plan funds. Where applicable, funds attributed to reimbursement checks not presented for payment within 90 days of the end of the Plan Year shall be retained by the Agent as a supplemental fee used to defray administrative costs. The Agent will adjust administrative fees on an annual basis. The adjustment will equal the average change in the consumer price index (according to the Bureau of Labor Statistics) over the prior three year period. The Agent may further adjust on a triennial basis (once every 3 years) by an amount relative to the current prevailing market rate for the same or similar services. The forgoing notwithstanding, the Agent may adjust fees at its discretion at anytime, by any amount and for any reason.

Employer Initial

Administration or plan funding fees not paid within the terms required will result in the Plan being placed in delinquency status. Delinquency status will result in service interruptions and/or delays including, but not limited to claim processing reporting and filing which will be the liability of the Plan Sponsor. Any plan funding ACH debits that are rejected or which, for any reason, processed through the bank will result in the Plan being placed in delinquency status following rejection notification until resolved.

Termination of Agreement

Except for nonpayment of fees and failure to remit Plan funds, this Agreement shall continue in effect until it is terminated by the Plan Sponsor or the Agent with a minimum of 60 days written notice prior to the Plan renewal date. If services are terminated by the Plan Sponsor prior to the end of the existing Plan year, the Plan Sponsor is responsible for administration fees for the remainder of that Plan year. Non-payment of administration fees and/or failure to remit funding on a timely basis will result in Plan termination. If services are terminated under this Agreement, the Plan Sponsor will be responsible for any outstanding services. In addition, it is understood that termination of this Agreement also terminates the provision of the prototype Plan Document (where applicable) and the Plan will henceforth be perceived as individually designed and the sole responsibility of the Plan Sponsor. This Agreement may be terminated by the Agent by providing the Plan Sponsor with a 10 day written notice of said termination if this Agreement is being terminated for failure to pay fees or to remit plan funds. Upon communication of the Plan Sponsor's intention to file Bankruptcy, the Agent reserves the right to terminate services immediately. Upon and after the expiration or termination of this Application, the rights granted to the Plan Sponsor pursuant to this Agreement shall revert back to Total Administrative Services Corporation. Within 20 days after termination or expiration of this Application, the Plan Sponsor shall return to TASC all manual, brochures, customer and vendor data bases, any other documents regarding the TASC programs and systems and any copies thereof. In addition, the Plan Sponsor shall refrain from any further direct or indirect use of or reference to the TASC marks, systems, publications, manuals, brochures, documents and computer databases in connection with the marketing, use, implementation, license, sale or distribution of any program, system or Plan offered by TASC. Finally, the termination of this Application shall not affect the duty of the Plan Sponsor not to infringe on TASC's trademarks and copyrights and not to disclose and keep confidential all said confidential information supplied to the Plan Sponsor by TASC.

Limitations of Warranties and Liabilities

Except as expressly set forth in this Agreement, the Agent disclaims any and all express warranties, warranties of fitness for a particular purpose and implied warranties of merchantability. Agent will not be liable for any loss of business or profits, or for any consequential, incidental, punitive, or similar damages, or, other than as set forth in this Agreement, for claims of damages made by any third party for any cause whatsoever, regardless of the form of action, whether in contract or in tort, including negligence, even if it has been advised of the possibility of such damages. Each party acknowledges that this limitation of liability reflects an informed, voluntary allocation between the parties of the risks (known and unknown) that may exist in connection with this Agreement. In no event will the Agent's liability exceed the payments made by Plan Sponsor to the Agent within the previous six months for services provided under this Agreement. This shall be the Plan Sponsor's exclusive remedy. No action, regardless of form, arising out of the services provided under this Agreement, may be brought by the Plan Sponsor more than two years after the date the last services are provided under this Agreement.

Money Back Guarantee

If you are not entirely pleased with the Plan, simply return all Plan materials within 30 days of the date received to obtain a refund of the related fee, less the \$100 nonrefundable minimum fee.

SECTION II

In addition to the preceding paragraphs, the following shall be applicable depending on the services elected by the Plan Sponsor.

Regardless of whether Plan Sponsor and/or Agent is adjudicating claims, any and all unsubstantiated or fraudulent Participant claims (regardless of whether by use of the debit card, web submitted, Agent or Participant submitted or manually submitted claims) and amounts distributed to a Participant that exceed the Participant's account balances are the Plan Sponsor's responsibility. Agent reserves the right to request a deposit or payment if the aggregate Participant account balance is, or is likely to be, less than \$0 at any point. The Agent will require a deposit or payment for negative Participant account balances or potential negative Participant account balances upon termination of the Plan.

Plan fees are calculated at a minimum or per Participant fee which ever is greater. Fees are also calculated on the number of Participants in the Plan, including terminated employees, at the time of invoice. The Plan Sponsor is responsible for administration fees for the entire Plan year, including grace period and run out period. Failure to remit Participant funds or payment for administrative services will result in a disruption of services, the forwarding to collections and/or termination of the Plan.

Execution and Delivery

This Agreement may be executed and delivered (including by facsimile or Portable Document Format (PDF) transmission) in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the parties and delivered to the other party. Any such facsimile or PDF documents and signatures shall have the same force and effect as manually-signed originals and shall be binding on the Plan Sponsor/Administrator and the Administering Agent.

Governing Law

This Agreement shall be governed under the laws of the State of Wisconsin.

Entire Agreement

This Agreement represents the entire agreement of the parties and supersedes any prior written or oral agreements. This agreement shall not be altered or amended.

IMPORTANT INFORMATION ABOUT YOUR PLAN

This agreement contains information about the services and responsibilities related to your Plan with Total Administrative Services Corporation (TASC) and shall be in effect indefinitely and will be automatically renewable. The agreement is applicable to the Plan selected in the Plan Application. Keep this document for future use. Please contact TASC for specific details on the Plan.

Administration

The Employer is the Plan Administrator and the Plan Sponsor of the ERISA plan(s). The Employer Plan Sponsor appoints TASC to prepare plan document(s)/SPD(s) and any other services elected in this Application.

Resolutions of the Board of Director/Plan Sponsor Amendment and Restatement of Employee Welfare Benefit Plans

The Employer will treat the benefit programs listed in Section 9, in effect as of the date of this Resolution/Application, and as any one of them may be amended from time to time, and any additional benefit program added by duly authorized action of the corporation or its representatives, as one Employee Welfare Benefit Plan for purposes of required governmental reports and required disclosure to participants and certain beneficiaries, and for COBRA election purposes.

Appointment

Subject to the supervision of the Plan Administrator/Employer, the signee on the other side of this agreement, the appointed Agent will provide the Plan Sponsor services elected in this Application, including the amendments thereto in accordance with its terms. All of the provisions of the Plan, including the provisions governing indemnification and limitations of liability, are hereby incorporated by reference. The Plan will remain in the possession of the Plan Administrator and will be kept within the guidelines of the Internal Revenue Code and ERISA. The employer also appoints and authorizes TASC to act as its agent and in its name for the employer's use and benefit with respect to establishment of the plan using the Plan Application.

Termination

These Plan services may be terminated by proper notice of one party to the other. Following the termination of the Plan services, this agreement shall automatically terminate, and all benefits shall be paid and final reports prepared. Terms by which these Plan services can be terminated are by written notice sixty (60) days in advance from either party or by written notice fifteen (15) days in advance to the Employer. Upon this sooner termination, the Administrator shall use the funds in its possession for the payment of benefits to the Employer and for its own fees and expenses. The Administrator has no responsibility to enforce the Employer's funding of benefits required under the Plan. Within 20 days after termination or expiration of this Application, the employer shall return to TASC all manuals, brochures, computer programs, customer and vendor data bases, and any other documents regarding the TASC programs and systems and any copies thereof. In addition, the employer shall refrain from any further direct or indirect use of or reference to the TASC marks, systems, publications, manuals, brochures, documents, computer programs and computer databases in connection with the marketing, use, implementation, license, sale or distribution of any program or system that enables employers to offer employee benefits on a pre-tax basis. Finally, the termination of this Application shall not affect the duty of the employer not to infringe on TASC's trademarks and copyrights and not to disclose and keep confidential all said Confidential Information supplied to the employer by TASC.



BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is made this _____ day of _____, in the year 20____, by and between _____ as plan sponsor and plan administrator acting on behalf of _____ ("Covered Entity") and Total Administrative Services Corporation, a Wisconsin corporation ("Business Associate").

Employer *Plan*

RECITALS

WHEREAS, Covered Entity is a group health plan ("Plan") and wishes to engage the services of Business Associate with respect to certain administrative aspects of the Plan as more specifically set forth in a Service Level Agreement ("SLA");

WHEREAS, Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of the SLA, some of which may constitute Protected Health Information ("PHI") (defined below).

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the SLA in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the "HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

WHEREAS, as part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entity to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and contained in this Agreement.

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

The general terms and conditions attached hereto are incorporated herein and deemed part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.

COVERED ENTITY:

By: _____

Print Name: _____

Title: _____

BUSINESS ASSOCIATE:

TOTAL ADMINISTRATIVE SERVICES CORPORATION

By: 

By:

Print Name: Brad Hoffman

Title: Executive Vice President, Customer Service

TERMS AND CONDITIONS

1. Definitions

- a. **Breach** shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].
- b. **Business Associate** shall mean Total Administrative Services Corporation.
- c. **Covered Entity** shall mean the party identified above.
- d. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- e. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- g. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
- h. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- i. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- j. **Protected Health Information** or **PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental 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 (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- k. **Protected Information** shall mean PHI provided by Covered Entity to Business Associate or created or received by Business Associate on Covered Entity's behalf.
- l. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- m. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

2. Obligations of Business Associate

- a. **Permitted Uses.** Business Associate shall not use Protected Information except for the purpose of performing Business Associate's obligations under the SLA and as permitted under the SLA and this Agreement. Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by Covered Entity. However, Business Associate may use Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; or (iii) for Data Aggregation purposes for the Health Care Operations of Covered Entity [45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].
- b. **Permitted Disclosures.** Business Associate shall not disclose Protected Information except for the purpose of performing Business Associate's obligations under the SLA and as permitted under the SLA and this Agreement. Business Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by Covered Entity. However, Business Associate may disclose Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity. If Business Associate discloses Protected Information to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) an agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(ii)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].
- c. **Prohibited Uses and Disclosures.** Business Associate shall not use or disclose Protected Information for fundraising or marketing purposes. Business Associate shall not disclose Protected Information to a health plan for payment or health care operation purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a)]. Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2); however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the SLA.
- d. **Appropriate Safeguards.** Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the SLA or this Agreement, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316 [42 U.S.C. Section 17931].
- e. **Reporting of Improper Access, Use or Disclosure.** Business Associate shall report to Covered Entity any access, use or disclosure of Protected Information not permitted by the SLA and this Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than 60 calendar days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].
- f. **Business Associate's Agents.** Business Associate shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI and implement the safeguards required by subparagraph d above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)].
- g. **Access to Protected Information.** Within thirty (30) days of receiving a written request from Covered Entity, Business Associate shall make Protected Information maintained by Business Associates or its agents or subcontractors in Designated Record Sets available to Covered Entity, in reasonable time and manner, for inspection and copying to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).

- h. **Amendment of PHI.** Business Associate or its agents or subcontractors shall, in a reasonable time and manner, make Protected Information available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from Business Associate or its agents or subcontractors, Business Associate shall notify Covered Entity of the request. Any approval or denial of an amendment of Protected Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of Covered Entity [45 C.F.R. Section 164.504(e)(2)(ii)(F)].
- i. **Accounting Rights.** Business Associate and its agents or subcontractors shall, in a reasonable time and manner, make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to, 42 U.S.C. Section 17935(c). In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall forward it to Covered Entity. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Information except as set forth in Sections 2.b. of this Agreement [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528]. The provisions of this subparagraph i shall survive the termination of this Agreement.
- j. **Governmental Access to Records.** Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining Business Associate and/or Covered Entity's compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)].
- k. **Minimum Necessary.** Business Associate (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)(3)]. Business Associate and Covered Entity acknowledge and agree that the definition of "minimum necessary" is in flux and shall keep themselves informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- 1. **Notification of Breach.** During the term of the SLA, Business Associate shall notify Covered Entity, as soon as practicable after discovery, of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which Business Associate becomes aware.
- m. **Breach Pattern or Practice by Covered Entity.** Pursuant to 42 U.S.C. Section 17934(b), if Business Associate knows or learns of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity's obligations under the SLA, this Agreement or other arrangement, Business Associate shall take reasonable steps to cure the breach or end the violation or cause Covered Entity to cure the breach or end the violation. If the steps are unsuccessful, Business Associate is legally obligated to terminate the SLA or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS. Notwithstanding anything to the contrary in the SLA, Business Associate shall not be liable for any damages suffered by Covered Entity as a result of the termination of the SLA to satisfy this obligation.

3. Obligations of Covered Entity. Covered Entity shall promptly notify Business Associate, in writing and in a timely manner, of any of the following:

- a. Changes in the form of notice of privacy practices ("NPP") that Covered Entity provides to individuals pursuant to 45 C.F.R. Section 164.520, and provide Business Associate a copy of the NPP currently in use.
- b. Changes in, or withdrawal of, the consent or authorization provided to Covered Entity by individuals pursuant to 45 C.F.R. Sections 164.506 or 164.508.
- c. Any arrangements permitted or required of Covered Entity that may impact in any manner the use and/or disclosure of Protected Information by Business Associate under the SLA or this Agreement, including but not limited to, restrictions on use and/or disclosure of Protected Information as provided for in 45 C.F.R. Sections 164.522.

4. Termination

- a. **Material Breach.** In the event that Covered Entity determines Business Associate has materially breached this Agreement, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation. If Business Associate does not cure the breach or end the violation within a reasonable time, Covered Entity may terminate this Agreement. [45 C.F.R. Section 164.504(e)(2)(iii)].
- b. **Effect of Termination.** Upon termination of the Contract for any reason, Business Associate shall, to the extent feasible, return or destroy all Protected Information that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by Business Associate, Business Associate shall continue to extend the protections of Section 2 of this Agreement to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible [45 C.F.R. Section 164.504(e)].

5. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the SLA or this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. Upon the request of Business Associate, Covered Entity agrees to promptly, in no case later than thirty (30) days from Business Associate's request, enter into an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws.

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

7. Effect on SLA. Except as specifically required to implement the purposes of this Agreement, or to the extent inconsistent with this Agreement, all terms of the SLA shall remain in force and effect.

8. Interpretation. This Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

9. Counterparts. This Agreement may be executed and delivered (including by facsimile or Portable Document Format (PDF) transmission) in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the parties and delivered to the other party. Any such facsimile documents and signatures shall, subject to applicable legal requirements, have the same force and effect as manually-signed originals and shall be binding on the parties hereto.