

## Business Associate Agreement

This Business Associate Agreement (“Agreement”) is entered into by and between \_\_\_\_\_ (“Plan Sponsor”), on its own behalf and on behalf of the group health plan it sponsors for employees or other covered persons (“Group Health Plan” or “the Plan”), and the CareFirst-Related Company designated on page 12 hereof (“Contractor”).

The Plan, the Plan Sponsor and Contractor have entered into or will enter into an Administrative Services Agreement (“ASA(s)”), under which Contractor has agreed to or will agree to provide certain services to or on behalf of the Plan.

In the performance of services on behalf of the Plan pursuant to the ASA, and in order for Contractor to use, disclose or create certain information pursuant to the terms of the ASA, some of which may constitute Protected Health Information (“PHI”) (defined below), Contractor is a Business Associate of the Plan as that term is defined by the Administrative Simplification regulations (45 C.F.R. Parts 160-164) of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), which include, the Standards for the Privacy of Individually Identifiable Health Information (“the Privacy Rule”), the Standards for Electronic Transactions, and the Security Rule (collectively the “HIPAA Rules”). Accordingly, Contractor, the Plan and Plan Sponsor mutually agree to modify the ASA to incorporate the terms of this Agreement to comply with the requirements of HIPAA Rules, and to include additional provisions that Plan Sponsor, the Plan and Contractor desire to have as part of the ASA.

Therefore, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the parties agree as follows:

### I. DEFINITIONS

- A. **Covered Entity.** “Covered Entity” shall mean Group Health Plan.
- B. **Individual.** “Individual” shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- C. **Required By Law.** “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR § 164.501.
- D. **Secretary.** “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
- E. **Protected Health Information.** “Protected Health Information” or “PHI” shall mean individually identifiable information created or received by a health care provider, health plan, employer or health care clearinghouse, that: (i) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to the individual, or the past, present or future payment for the provision of health care to the individual; (ii) 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 (iii) is transmitted or maintained in an electronic medium, or in any other form or medium. “Protected Health Information” shall be limited to the information created or received by Contractor from or on behalf of Covered Entity.
- F. **Standard Transactions.** “Standard Transaction(s)” shall mean a transaction that complies with the standards set forth at 45 C.F.R. Part 162.
- G. **Designated Record Set.** “Designated Record Set” shall mean:  
  
A group of records maintained by or for a covered entity that is:

- i) The medical records and billing records about individuals maintained by or for a covered health care provider;
  - ii) The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
  - iii) Used, in whole or in part, by or for the covered entity to make decisions about individuals.
- H. Covered Person.** “Covered Person” means the Covered Employee and the Covered Employee’s legal spouse and/or unmarried dependent children as specified in the Plan.
- I. Summary Health Information.** “Summary Health Information” means information, which may be PHI, (1) that summarizes the claims history, claims expenses, or types of claims experienced by Covered Persons for whom a Plan Sponsor has provided health care benefits under the Plan, and (2) from which the identifiers specified in 45 C.F.R. § 164.514(b)(2)(i) have been deleted (except that the zip code information described in 45 C.F.R. § 164.514(b)(2)(i)(B) may be aggregated to the level of a five (5) digit zip code).
- J. Electronic Protected Health Information.** “Electronic Protected Health Information” (hereinafter, “EPHI”) means individually identifiable health information that is transmitted by electronic media or maintained in electronic media and has the same meaning as the term “electronic protected health information” as defined in 45 C.F.R. § 160.103.
- K. Information Systems.** “Information Systems” means an interconnected set of information resources under the same direct management and control that shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and people and has the same meaning as the term “information systems” as defined in 45 C.F.R. § 164.304.
- L. Security Incident.** “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 and has the same meaning as the term “security incident” as defined in 45 C.F.R. § 164.304.
- M.** All other capitalized terms used in this Agreement shall have the meanings set forth in the applicable definitions under the HIPAA Rules.

## II. PRIVACY OF PROTECTED HEALTH INFORMATION

### A. Permitted Uses And Disclosures By Contractor

1. During the continuance of the ASA, Contractor will manage, operate and administer the Plan, and will perform the usual and customary services necessary in connection with the Plan, as outlined in the ASA. These services include Payment activities, Health Care Operations, and Data Aggregation as these terms are defined in 45 C.F.R. § 164.501. In connection with the services to be performed pursuant to the ASA, Contractor is permitted or required to use or disclose PHI it creates or receives for or from the Plan or to request PHI on the Plan’s behalf as follows:
2. Functions and Activities on the Plan’s Behalf. Unless otherwise limited in this Agreement, Contractor may use or disclose PHI to perform functions, activities, or services for, or on behalf of, the Plan as specified in the ASA. Contractor may decide in its own reasonable discretion what uses and disclosures of PHI are required for it to perform administrative services for the Plan as outlined in this Agreement and in the ASA.

- a. Use for Contractor's Operations. Contractor may use PHI it creates or receives for or from the Plan for Contractor's proper management and administration or to carry out Contractor's legal responsibilities in connection with services to be provided under the ASA.
  - b. Disclosures for Contractor's Operations. Contractor may disclose the minimum necessary of such PHI to a third party for Contractor's proper management and administration or to carry out Contractor's legal responsibilities, but only if the following conditions are met:
    - 1) The disclosure is required by law; or
    - 2) Contractor obtains reasonable assurance, evidenced by written contract, from any person or organization to which Contractor will disclose such PHI that the person or organization will:
      - a) Hold such PHI in confidence and use or further disclose it only for the purpose for which Contractor disclosed it to the person or organization or as required by law; and
      - b) Promptly notify Contractor (who will in turn promptly notify the Plan) of any instance of which the person or organization becomes aware in which the confidentiality of such PHI was breached.
  - c. Minimum Necessary Standard. In performing functions and activities in connection with the ASA, Contractor agrees to make reasonable efforts to use, disclose or request only the minimum necessary PHI to accomplish the intended purpose of the use, disclosure or request.
3. Data Aggregation Services. The Plan agrees and recognizes that Contractor performs Data Aggregation services for the Plan, as defined by the Privacy Rule. In the course of performing normal and customary services under the ASA, this Data Aggregation is an essential part of Contractor's work on behalf of the Plan under the ASA. Accordingly, Contractor can perform these Data Aggregation services at its own discretion, subject to any limitations imposed by the ASA. The term "Data Aggregation" is defined under the Privacy Rule to mean, with respect to PHI created or received by a Business Associate in its capacity as the Business Associate of a covered entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another covered entity, to permit data analyses that relate to the Health Care Operations of the respective covered entities.
4. Prohibition on Unauthorized Use or Disclosure
- a. Non-permitted Use and Disclosure of PHI. Contractor will neither use nor disclose PHI it creates or receives for or from the Plan or from another Business Associate of the Plan, except as permitted or required by the ASA, this Agreement, or as required by law, as otherwise permitted in writing by the Plan, or as authorized by a Covered Person.
  - b. Disclosure to the Plan and the Plan Business Associates. To the extent permitted or required by the ASA and this Agreement, Contractor will disclose PHI to other Business Associates of the Plan which the Plan has identified in a writing provided to Contractor. Contractor shall only disclose such PHI to such Business Associates, in their capacity as Business Associates of the Group Health Plan. Other than disclosures permitted by this Section II.A or as otherwise specifically identified in the ASA, Contractor

will not disclose Covered Persons' PHI to the Plan or to a Business Associate of the Plan except as directed by the Plan in writing.

- c. No Disclosure to Plan Sponsor. Contractor will not disclose any Covered Persons' PHI to Plan Sponsor, except as permitted by and in accordance with Section V or as otherwise specifically identified in the ASA.

## **B. Obligations And Activities Of Contractor**

1. Contractor will develop, document, implement, maintain and use appropriate administrative, technical and physical safeguards to preserve the integrity and confidentiality of, and to prevent non-permitted use or disclosure of, PHI created or received for or from the Plan.
2. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of this Agreement.
3. Contractor agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement or otherwise in writing by the Plan.
4. Contractor will require that any agent, including a subcontractor, to whom it provides PHI as permitted by this Agreement (or as otherwise permitted with the Plan's prior written approval), agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information.
5. Contractor agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
6. Covered Entity shall provide Contractor with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Contractor's permitted or required uses and disclosures.

## **C. Individual Rights Obligations**

1. Access. Contractor and the Plan agree that, wherever feasible, and to the extent that responsive information is in the possession of Contractor, Contractor will provide access to PHI as required by 45 C.F.R. §164.524 on the Plan's behalf. Contractor will provide such access according to its own procedures for such access. Contractor represents that its procedures for such access comply with the requirements of 45 C.F.R. §164.524. Such provision of access will not relieve the Plan of any additional and independent obligations to provide access where requested by an individual. Accordingly, upon the Plan's written or electronic request or the direct request of a Covered Person or the Covered Person's Personal Representative, Contractor will make available for inspection and obtaining copies by the Plan, or at the Plan's direction by the Covered Person (or the Covered Person's personal representative), any PHI about the Covered Person created or received for or from the Plan in Contractor's custody or control contained in a Designated Record Set, so that the Plan may meet its access obligations under 45 C.F.R. §164.524. All fees related to this access, as determined by Contractor, shall be borne by Covered Persons seeking access to PHI.

2. Amendment. Contractor and the Plan agree that, wherever feasible, and to the extent that responsive information is in the possession of Contractor, Contractor will amend PHI as required by 45 C.F.R. §164.526 on the Plan's behalf. Contractor will amend such PHI according to its own procedures for such amendment. Contractor represents that its procedures for such amendment comply with the requirements of 45 C.F.R. §164.526. Such amendment will not relieve the Plan of any additional and independent obligations to amend PHI where requested by an individual. Accordingly, upon the Plan's written or electronic request or the direct request of a Covered Person or the Covered Person's Personal Representative, Contractor will amend such PHI contained in a Designated Record Set, in accordance with the requirements of 45 C.F.R. §164.526. Upon receipt of written or electronic notice from the Plan, Contractor will amend or permit the Plan access to amend any portion of the PHI created or received for or from the Plan in Contractor's custody or control, so that the Plan may meet its amendment obligations under 45 C.F.R. §164.526.

3. Disclosure Accounting. So that the Plan may meet its disclosure accounting obligations under 45 C.F.R. §164.528, Contractor and the Plan agree that, wherever feasible and to the extent that disclosures have been made by Contractor, Contractor will provide the accounting that is required under 45 C.F.R. §164.528 on the Plan's behalf. Contractor will provide such accounting according to its own procedures for such accounting. Contractor represents that its procedures for such accounting comply with the requirements of 45 C.F.R. §164.528. Such provision of disclosure accounting will not relieve the Plan of any additional and independent obligations to provide disclosure accounting where requested by an individual. Accordingly, upon the Plan's written or electronic request or the direct request of a Covered Person or the Covered Person's Personal Representative, Contractor will provide an accounting as set forth below.

a. Disclosure Tracking

Contractor will record each disclosure of Covered Persons' PHI, which is not excepted from disclosure accounting under 45 C.F.R. § 164.528, that Contractor makes to the Plan or to a third party.

The information about each disclosure that Contractor must record is (a) the disclosure date, (b) the name and (if known) address of the person or entity to whom Contractor made the disclosure, (c) a brief description of the PHI disclosed, and (d) a brief statement of the purpose of the disclosure (items (a)-(c), collectively "Disclosure Information").

For repetitive disclosures of Covered Persons' PHI that Contractor makes for a single purpose to the same person or entity (including the Plan), Contractor may record (a) the Disclosure Information for the first of these repetitive disclosures, (b) the frequency, periodicity or number of these repetitive disclosures, and (c) the date of the last of these repetitive disclosures.

b. Exceptions from Disclosure Tracking

Contractor is not required to record disclosure information or otherwise account for disclosures of PHI that this Agreement or the Plan in writing permits or requires: (i) for the purpose of Covered Entity's payment activities or Health Care Operations; (ii) for the purpose of health care providers' Treatment activities, or (other) covered entities' Payment activities or certain Health Care Operations (as set forth in 45 C.F.R. § 164.506(c)(4)); (iii) to the individual who is the subject of the PHI disclosed; (iv) which are incidental to a use or disclosure otherwise permitted or required; (v) pursuant to an authorization; (vi) to persons involved in that individual's care; (vii) for

notification for disaster relief purposes; (viii) for national security or intelligence purposes; (ix) to correctional institutions or law enforcement officials regarding inmates; (x) as part of a limited data set; or (xi) for disclosures prior to April 14, 2003.

c. Disclosure Tracking Time Periods

Contractor will have available for the Plan or for Covered Persons an accounting of disclosures of PHI for the six (6) years immediately preceding the date of the Plan requested the accounting.

4. Right to Request Restrictions and Confidential Communications

So that the Plan may meet its obligations to evaluate requests for restrictions and confidential communications in connection with the disclosure of PHI under 45 C.F.R. § 164.522, Contractor and the Plan agree that, wherever feasible and to the extent that communications are within the control of Contractor, Contractor will perform these evaluations on behalf of the Plan. Contractor will evaluate such requests according to its own procedures for such requests, and shall implement such appropriate operational steps as are required by its own procedures. Contractor represents that its procedures for evaluating such requests comply with the requirements of 45 C.F.R. § 164.522. Such evaluation will not relieve the Plan of any additional and independent obligations to evaluate restrictions or implement confidential communications where requested by an individual. Accordingly, upon the Plan's written or electronic request or the direct request of a Covered Person or the Covered Person's Personal Representative, Contractor will evaluate requests for restrictions and requests for confidential communications, and will respond to these requests as appropriate under Contractor's procedures.

**D. Obligations Of The Plan And Plan Sponsor**

1. Covered Entity shall provide Contractor with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Contractor's permitted or required uses and disclosures.
2. Covered Entity shall notify Contractor of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522.
3. Covered Entity shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity except as provided in this Agreement. In no event shall Covered Entity request Contractor to disclose to Covered Entity or agents of Covered Entity any PHI unless such disclosure is the minimum necessary disclosure that satisfies the request and that such disclosure is solely for the purpose of treatment, payment or plan operations.

**III. COMPLIANCE WITH STANDARD TRANSACTIONS**

- A. Conducting Standard Transactions.** In the course of performing services for the Plan pursuant to the ASA, Contractor will conduct Standard Transactions for or on behalf of the Plan. Contractor will comply, and will require any subcontractor or agent involved with the conduct of such Standard Transactions to comply, with each applicable requirement of 45 C.F.R. Parts 160 and 162. Further, Contractor will not enter into, or permit its subcontractors or agents to enter into, any trading partner agreement in connection with the conduct of Standard Transactions for or on behalf of the Plan that:

1. Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;
2. Adds any data element or segment to the maximum defined data set;
3. Uses any code or data element that is marked "not used" in the Standard Transaction's implementation specification or is not in the Standard Transaction's implementation specification; or
4. Changes the meaning or intent of the Standard Transaction's implementation specification, as these terms are defined in 45 C.F.R. Part 162.

**B. Specific Communications.** Contractor, Plan Sponsor and the Plan recognize and agree that communications between the parties that are required to meet the Standards for Electronic Transactions will meet such Standards. Communications between Plan Sponsor and Contractor, or between Plan Sponsor and the Plan, do not need to comply with the Standards for Electronic Transactions. Accordingly, unless agreed to otherwise by the Parties in writing, all communications (if any) for purposes of "enrollment" as that term is defined in 45 C.F.R. Part 162, Subpart O and "Health Plan Premium Payment Data," as that term is defined in 45 C.F.R. Part 162, Subpart Q, shall be conducted between the Plan Sponsor and either Contractor or the Plan. For all such communications (and any other communications between Plan Sponsor and Contractor), Plan Sponsor shall use such forms, tape formats or electronic formats as Contractor may approve. Plan Sponsor will include all information reasonably required by Contractor to effect such data exchanges or notifications.

**C. Communications Between Contractor and the Plan.** All communications between Contractor and the Plan that are required to meet the Standards for Electronic Transactions shall do so. For any other communications between Contractor and the Plan, the Plan shall use such forms, tape formats or electronic formats as Contractor may approve. The Plan will include all information reasonably required by Contractor to effect such data exchanges or notifications.

#### **IV. SAFEGUARDS FOR SECURNG ELECTRONIC PROTECTED HEALTH INFORMATION**

**A. Information Safeguards.** Contractor shall implement administrative, physical, and technical safeguards consistent with (and as required by) the Security Rule that reasonably protect the confidentiality, integrity, and availability of EPHI that Contractor creates, receives, maintains, or transmits on behalf of the Plan.

**B. Second-Tier Business Associates.** Contractor shall ensure that any agent, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect it.

**C. Reporting Security Incidents to Covered Entity.** Contractor agrees to the following reporting procedures for Security Incidents that result in unauthorized access, use, disclosure, modification or destruction of EPHI or interference with system operations ("Successful Security Incidents") and for Security Incidents that do **not** result in unauthorized access, use, disclosure, modification or destruction of EPHI or interference with system operations ("Unsuccessful Security Incidents").

1. Successful Security Incidents. Contractor shall report to the Plan any Successful Security Incident of which it becomes aware of within five (5) business days. At a minimum such report will contain the following information:
  - a) Date and time when the Security Incident occurred and/or was discovered;
  - b) Names of systems, programs, or networks affected by the Security Incident;
  - c) Preliminary impact analysis;

- d) Description of and scope of EPHI used, disclosed, modified, or destroyed by the Security Incident; and
- e) Description of any mitigation steps taken.

Contractor shall provide the report to the Security Official at **[Address]** and to the individual specified under the Notice provision in the Agreement and shall send such report by traceable carrier.

- 2. Unsuccessful Security Incidents. To avoid unnecessary burden on either party, Contractor shall report to the Plan any Unsuccessful Security Incident of which it becomes aware of only upon request of the Plan. The frequency, content and the format of the report of Unsuccessful Security Incidents shall be mutually agreed upon by the parties.

## V. PLAN SPONSOR'S PERFORMANCE OF PLAN ADMINISTRATION FUNCTIONS

- A. Communication of PHI. Except as specifically agreed upon by Contractor, the Plan and Plan Sponsor, and in compliance with any requirements imposed by this Section V, all disclosures of PHI from Contractor pursuant to the ASA shall be made to the Plan, except for disclosures related to enrollment or disenrollment in the Plan.
- B. Summary Health Information. Upon Plan Sponsor's written request for the purpose either (1) to obtain premium bids for providing health insurance coverage for the Plan, or (2) to modify, amend or terminate the Plan, Contractor is authorized to provide Summary Health Information regarding the Covered Persons in the Plan to Plan Sponsor.
- C. Plan Sponsor Representation. Plan Sponsor represents and warrants (1) that the Plan is an employee welfare benefit plan that has been established and is maintained pursuant to its Plan Document in compliance with ERISA, (2) that the Plan's Plan Document provides for the allocation and delegation of responsibilities for the Plan, including the responsibilities assigned to Contractor under the ASA, (3) that the Plan's Plan Document includes or incorporates by reference the appropriate terms of the ASA and this Agreement, and (4) that Plan Sponsor has amended the Plan's Plan Document (as defined by ERISA) to incorporate the provisions required by 45 C.F.R. §164.504(f)(2), and agrees to comply with the Plan's Plan Document as amended.
- D. Plan Sponsor's Certification. Contractor will not disclose Covered Persons' PHI to Plan Sponsor, unless and until (1) Plan Sponsor furnishes Contractor through the Plan certification that Plan Sponsor has amended the Plan's Plan Document (as defined by ERISA) to incorporate the provisions required by 45 C.F.R. §164.504(f)(2), and agrees to comply with the Plan's Plan Document as amended, and (2) the Plan authorizes Contractor in writing to disclose the minimum necessary Covered Persons' PHI to Plan Sponsor for the plan administration functions to be performed by Plan Sponsor as specified in the amendment to the Plan's Plan Document.
- E. Contractor Reliance. Contractor may rely on Plan Sponsor's certification and the Plan's written authorization, and will have no obligation to verify (1) that the Plan's Plan Document has been amended to comply with the requirements of 45 C.F.R. §164.504(f)(2) or this Agreement or (2) that Plan Sponsor is complying with the Plan's Plan Document as amended.
- F. The Plan's Plan Document Amendment. Before the Plan will furnish Plan Sponsor's certification described above to Contractor, the Plan will ensure (1) that its Plan Document is amended to establish the permitted uses and disclosures of Covered Persons' PHI by the Plan Sponsor and that such use and disclosure is consistent with the requirements of 45 C.F.R. Part 164, and (2) that Plan Sponsor agrees to all the conditions imposed by §164.504(f)(2) on the use or disclosure of PHI.

## VI. **BREACH OF AGREEMENT**

Without limiting the rights of the parties under the ASA, the Plan will have the right to terminate the ASA if Contractor has engaged in a pattern of activity or practice that constitutes a material breach or violation of Contractor's obligations regarding PHI under this Agreement and, on notice of such material breach or violation from the Plan, fails to take reasonable steps to cure the breach or end the violation.

If Contractor fails to cure the material breach or end the violation after the Plan's notice, the Plan may terminate the ASA by providing Contractor written notice of termination, stating the uncured material breach or violation that provides the basis for the termination and specifying the effective date of the termination. Such termination shall be effective 60 days from this termination notice.

### A. Effect of Termination.

#### 1. Return or Destruction Upon ASA End

Upon cancellation, termination, expiration or other conclusion of the ASA, Contractor will if feasible return to the Plan or destroy all PHI, in whatever form or medium (including in any electronic medium under Contractor's custody or control), that Contractor created or received for or from the Plan, including all copies of such PHI that allow identification of any Covered Person who is a subject of the PHI. Contractor will complete such return or destruction as promptly as practical after the effective date of the cancellation, termination, expiration or other conclusion of the ASA.

Plan Sponsor will reimburse Contractor's reasonable cost incurred in returning or destroying such PHI.

#### 2. Disposition When Return or Destruction Not Feasible

The Plan recognizes that in many situations, particularly those involving Data Aggregation services performed by Contractor for the Plan and others, that it will be infeasible for Contractor to return or destroy PHI. Accordingly, where in Contractor's discretion such return or destruction is infeasible, for any such PHI, upon cancellation, termination, expiration or other conclusion of the ASA, Contractor will limit its further use or disclosure of the PHI to those purposes that make their return to the Plan or destruction infeasible.

## VII. **INDEMNIFICATION**

A. The Plan and Plan Sponsor will indemnify and hold harmless Contractor and any Contractor affiliate, officer, director, employee or agent from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted or violating use or disclosure of PHI or other breach of this Agreement by the Plan, Plan Sponsor or any subcontractor, agent, person or entity under their control.

B. **Right to Tender or Undertake Defense.** If Contractor is named a party in any judicial, administrative or other proceeding arising out of or in connection with any non-permitted or violating use or disclosure of PHI or other breach of this Agreement by the Plan or Plan Sponsor or any subcontractor, agent, person or entity under their control, Contractor will have the option at any time either (i) to tender its defense to the Plan and the Plan Sponsor, in which case the Plan and the Plan Sponsor will provide qualified attorneys, consultants, and other appropriate professionals to represent Contractor's interests at the Plan and Plan Sponsor's expense, or (ii) undertake its own defense, choosing the attorneys, consultants, and other appropriate professionals to represent its interests, in which case the Plan and the

Plan Sponsor will be responsible for and pay the reasonable fees and expenses of such attorneys, consultants, and other professionals.

- C. **Right to Control Resolution.** Contractor will have the sole right and discretion to settle, compromise or otherwise resolve any and all claims, causes of actions, liabilities or damages against it, notwithstanding that Contractor may have tendered its defense to the Plan and Plan Sponsor. Any such resolution will not relieve the Plan and Plan Sponsor of their obligation to indemnify Contractor under this Agreement.

## VIII. **MISCELLANEOUS**

- A. **Regulatory References.** A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended, and for which compliance is required.
- B. **Survival.** The respective rights and obligations of Contractor under Section II.C. of this Agreement shall survive the termination of this Agreement.
- C. **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Plan to comply with the HIPAA Rules. Except to the extent specified by this Agreement, all of the terms and conditions of the ASA shall be and remain in full force and effect. In the event of any inconsistency or conflict between this Agreement and the ASA, the terms and provisions and conditions of this Agreement shall govern and control. Nothing express or implied in this Agreement and/or in the ASA is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever. This Agreement shall be governed by and construed in accordance with the same internal laws that are applicable to the ASA.
- D. **Term.** This Agreement will continue in full force and effect for as long as the ASA remains in full force and effect. This Agreement will terminate upon the cancellation, termination, expiration or other conclusion of the ASA.
- E. **Amendment.** Upon the compliance date of any final regulation or amendment to final regulations of the HIPAA Rules, this Agreement will automatically amend such that the obligations imposed on Plan Sponsor, the Plan and Contractor remain in compliance with such regulations, unless (1) Contractor elects to terminate the ASA by providing Plan Sponsor and the Plan notice of termination in accordance with the ASA at least thirty (30) days before the compliance date of such final regulation or amendment to final regulations; or (2) Contractor notifies the Plan of its objections to any such amendment. In the event of such an objection, the parties will negotiate in good faith in connection with such changes or amendment to the relevant final regulation.
- F. **Conflicts.** The provisions of this Agreement will override and control any conflicting provision of the ASA. All nonconflicting provisions of the ASA will remain in full force and effect.
- G. **Independent Relationship.** None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the parties other than that of independent parties contracting with each other as independent contractors solely for the purposes of effecting the provisions of this Agreement and the ASA.
- H. **Rights of Third Parties.** This Agreement is between Contractor and the Plan and the Plan Sponsor and shall not be construed, interpreted, or deemed to confer any rights whatsoever to any third party or parties.

- I. **Notices**. All notices and notifications under this Agreement shall be sent in writing by traceable carrier to the listed persons on behalf of Contractor, the Plan and Plan Sponsor at the addresses indicated on page 12 hereof, or such other address as a party may indicate by at least ten (10) days' prior written notice to the other parties. Notices will be effective upon receipt:
- J. **Expenses**. Unless otherwise stated in this Agreement or the ASA, each party shall bear its own costs and expenses related to compliance with the above provisions. Any additional expenses incurred by Contractor in connection with services to be provided pursuant to this Agreement shall be included in the ASA.
- K. **Documentation**. All documentation that is required by this Agreement or by the HIPAA Privacy Rule must be retained by Contractor for six years from the date of creation or when it was last in effect, whichever is longer.

AGREED By and Between the undersigned Parties this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

For Plan Sponsor:	For Group Health Plan:
_____ <b>Signature</b>	_____ <b>Signature</b>
_____ <b>Title</b>	_____ <b>Title</b>
_____ <b>Printed Name</b>	_____ <b>Printed Name</b>
_____ <b>Plan Sponsor Notice Contact Name</b>	_____ <b>Group Health Plan Notice Contact Name</b>
_____ <b>Street Address</b>	_____ <b>Street Address</b>
_____ <b>City, State, Zip</b>	_____ <b>City, State, Zip</b>

**For Contractor:**

- \_\_\_\_\_ **Group Hospitalization and Medical Services, Inc., d/b/a/ CareFirst BlueCross BlueShield**
- \_\_\_\_\_ **CareFirst of Maryland, Inc. d/b/a/ CareFirst BlueCross BlueShield**
- \_\_\_\_\_ **CareFirst BlueChoice, Inc.**
- \_\_\_\_\_ **Delmarva Health Plan, Inc.**
- \_\_\_\_\_ **Willse & Associates, Inc. d/b/a/ NCAS**
- \_\_\_\_\_ **National Capital Administrative Services, Inc. d/b/a/NCAS**
- \_\_\_\_\_ **BCBSD, Inc. d/b/a Blue Cross Blue Shield of Delaware**
- \_\_\_\_\_ **PHN – HMO, Inc.**
- \_\_\_\_\_ **Other (Specify) \_\_\_\_\_**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Printed Name**

**Contractor Address for Notices:**

CareFirst BlueCross BlueShield  
 Privacy Office  
 10455 Mill Run Circle  
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