

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“BAA”) is made in connection with the Administrative Services Agreement (Agreement) between UnitedHealthcare Insurance Company identified as Contract No. 701043 on behalf of itself and its Affiliates Business Associate and Adams County Government’s group health plan (Covered Entity) (each a “Party” and collectively the “Parties”) and is effective August 1, 2016 (Effective Date). This BAA replaces the terms of any business associate BAA between the parties

The Parties hereby agree as follows:

### **RECITALS:**

WHEREAS, Covered Entity is subject to federal privacy rules promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) as amended by the American Recovery and Reinvestment Act of 2009/HITECH Act (P.L. 11-005); and

WHEREAS, Business Associate provides services for Covered Entity that may involve access to, use, or disclosure of Protected Health Information (“PHI”) ; and

WHEREAS, Covered Entity and Business Associate are committed to complying with the Privacy and Security Regulations and desire to set forth the rights and responsibilities of the parties with respect to Protected Health Information;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

### **1. DEFINITIONS**

1.1 Capitalized terms used but not otherwise defined in this BAA have the meanings established for purposes of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations as amended from time to time (collectively, “HIPAA”).

1.3 “ARRA” shall mean the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, 42 U.S.C. §§ 17921-17954, and any and all references in this BAA to sections of ARRA shall be deemed to include all associated existing and future implementing regulations, when and as each is effective.

1.4 “Breach” shall mean the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule that compromises the security or privacy of the PHI as defined, and subject to the exceptions set forth, in 45 C.F.R. § 164.402.

1.5 “Compliance Date” shall mean, in each case, the date by which compliance is required under the referenced provision of ARRA and/or its implementing regulations, as applicable; provided that, in any case for which that date occurs prior to the Effective Date of this BAA, the Compliance Date shall mean the Effective Date.

1.6 “Electronic Protected Health Information” (ePHI) shall mean PHI as defined in Section 1.7 that is transmitted or maintained in electronic media.

1.7 “Individual” shall have the same meaning as the term “Individual” in 45 § C.F.R. 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R § 164.502(g).

1.8 “PHI” shall mean Protected Health Information, as defined in 45 C.F.R. § 160.103, and is limited to the Protected Health Information received from, or received or created on behalf of, Covered Entity by Business Associate pursuant to the performance of the Services.

1.9 “Privacy Rule” shall mean the federal privacy regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, codified at 45 C.F.R. §§ 160 and 164 (Subparts A & E).

1.10 “Required by Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.

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

1.13 “Security Rule” shall mean the federal security regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, codified at 45 C.F.R. §§ 160 and 164 (Subparts A & C).

1.14 “Services” shall mean, to the extent and only to the extent they involve the creation, use or disclosure of PHI, the services provided by Business Associate to Covered Entity under the Agreement, including those set forth in this BAA in Sections 4.3 through 4.7, as amended by written agreement of the Parties from time to time.

## **2. RESPONSIBILITIES OF BUSINESS ASSOCIATE**

With regard to its use and/or disclosure of PHI, Business Associate agrees to:

2.1 Use and/or disclose PHI only as necessary to provide the Services, as permitted or required by this BAA and in compliance with each applicable requirement of 45 C.F.R. 164.504(e) or as otherwise Required by Law; provided that, to the extent Business Associate is to carry out Covered Entity’s

obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of those obligations.

2.2 Develop, implement, maintain and use appropriate administrative, physical and technical safeguards to (i) prevent use or disclosure of PHI other than as permitted or required by this BAA, or as otherwise required by law; (ii) reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity; and (iii) as of the Compliance Date of 42 U.S.C. § 17931, comply with the Security Rule requirements set forth in 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316.

2.3 Without unreasonable delay, report to Covered Entity: (i) any use or disclosure of PHI, of which it becomes aware, that is not provided for by this BAA and/or the Agreement; and/or (ii) any Security Incident of which Business Associate becomes aware in accordance with 45 C.F.R. § 164.314(a)(2)(i)(C).

2.4 With respect to any use or disclosure of Unsecured PHI not permitted by the Privacy Rule that is caused solely by Business Associate's failure to comply with one or more of its obligations under this BAA, Covered Entity hereby delegates to Business Associate the responsibility for determining when any such incident is a Breach. In the event of a Breach, Business Associate shall (i) provide Covered Entity with written notification, and (ii) provide all legally required notifications to Individuals, HHS and/or the media, on behalf of Covered Entity. Business Associate shall provide these notifications in accordance with the data breach notification requirements set forth in 42 U.S.C. § 17932 and 45 C.F.R. §§ 160 & 164 subparts A, D & E as of their respective Compliance Dates, and shall pay for the reasonable and actual costs associated with such notifications. In the event of a Breach, without unreasonable delay, and in any event no later than sixty (60) calendar days after Discovery, Business Associate shall provide Covered Entity with written notification that includes a description of the Breach, a list of Individuals and a copy of the template notification letter to be sent to Individuals.

2.5 Require all of its subcontractors and agents that create, receive, maintain, or transmit PHI on behalf of Business Associate to agree, in writing, to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate; including but not limited to the extent that Business Associate with respect to that PHI.

2.6 Make available its internal practices, books, and records relating to the use and disclosure of PHI to the Secretary for purposes of determining Covered Entity's compliance with the Privacy Rule.

2.7 After receiving a written request from Covered Entity or an Individual, make available to the Covered Entity, or at the direction of the Covered Entity,

directly to an Individual, an accounting of disclosures of PHI about the Individual, in accordance with 45 C.F.R. § 164.528.

2.8 Notwithstanding Section 2.7, in the event that Business Associate in connection with the Services uses or maintains an Electronic Health Record of PHI of or about an Individual, then Business Associate shall, when and as directed by Covered Entity or when requested by an Individual, make an accounting of disclosures of PHI directly to an Individual within thirty (30) days after receiving a written request, in accordance with the requirements for accounting for disclosures made through an Electronic Health Record in 42 U.S.C. § 17935(c) as of its Compliance Date.

2.9 Provide access after receiving a written request from Covered Entity or an Individual, to PHI in a Designated Record Set about an Individual, to the Covered Entity, or at the direction of the Covered Entity, directly to an Individual, in accordance with the requirements of 45 C.F.R. § 164.524.

2.10 Notwithstanding Section 2.9, in the event that Business Associate in connection with the Services uses or maintains an Electronic Health Record of PHI of or about an Individual, then Business Associate shall provide an electronic copy of the PHI, directly to an Individual or a third party designated by the Individual, all in accordance with 42 U.S.C. § 17935(e) as of its Compliance Date.

2.11 To the extent that the PHI in Business Associate's possession constitutes a Designated Record Set, make available, within thirty (30) days after a written request by Covered Entity or an Individual, PHI for amendment and incorporate any amendments to the PHI, as directed by Covered Entity or an Individual, all in accordance with 45 C.F.R. § 164.526.

2.12 Request, use and/or disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure; provided, that Business Associate shall comply with 42 U.S.C. § 17935(b) as of its Compliance Date.

2.13 Accommodate reasonable requests by Individuals for confidential communications in accordance with 45 C.F.R. 164.522(b) of the Privacy Rule.

2.14 Not directly or indirectly receive remuneration in exchange for any PHI as prohibited by 42 U.S.C. § 17935(d) as of its Compliance Date.

2.15 Not make or cause to be made any communication about a product or service that is prohibited by 42 U.S.C. § 17936(a) as of its Compliance Date.

2.16 Not make or cause to be made any written fundraising communication that is prohibited by 42 U.S.C. § 17936(b) as of its Compliance Date.

2.17 Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of this BAA.

**3. RESPONSIBILITIES OF COVERED ENTITY**

In addition to any other obligations set forth in the Agreement, including this BAA, Covered Entity:

3.1 Shall provide to Business Associate only the minimum PHI necessary to accomplish the Services

3.2 Shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

3.3 Shall notify Business Associate of any changes in, or revocation of, permission by Individuals to use or disclose Protected Health Information, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

3.4 Shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

3.5 Agrees and understands that the Covered Entity is independently responsible for the security of all PHI in its possession (electronic or otherwise), including all PHI that it receives from outside sources, including the Business Associate.

3.6 In the event Covered Entity takes action as described in this Section, Business Associate shall decide which restrictions or limitations it will administer. In addition, if those limitations or revisions materially increase Business Associate's cost of providing Services under the Agreement, including this BAA, Covered Entity shall reimburse Business Associate for such increase in cost.

**4. OTHER PERMITTED USES AND DISCLOSURES OF PHI**

Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or required by this BAA or the Agreement, Business Associate may:

4.1 Make any and all uses and disclosures of PHI necessary to provide the Services to Covered Entity.

4.2 Use and disclose to subcontractors and agents the PHI in its possession for its proper management and administration or to carry out the legal responsibilities of Business Associate, provided that any third party to which Business Associate discloses PHI for those purposes provides written assurances in advance that: (i) the information will be held confidentially and used or further disclosed only as Required by Law; (ii) the information will be used only for the purpose for which it was disclosed to the third party; and (iii) the third party promptly will notify

Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached.

4.3 De-identify any and all PHI obtained by Business Associate under this BAA, which De-identified information does not constitute PHI, is not subject to this BAA and may be used and disclosed on Business Associate's own behalf, all in accordance with the De-identification requirements of the Privacy Rule.

4.4 Provide Data Aggregation services relating to the Health Care Operations of the Covered Entity, including through subcontractors and agents, in accordance with the Privacy Rule.

4.5 Identify Research projects conducted by Business Associate, its Affiliates or third parties for which PHI may be relevant; obtain on behalf of Covered Entity documentation of individual authorizations or an Institutional Review Board or privacy board waiver that meets the requirements of 45 C.F.R. § 164.512(i)(1) (each an "Authorization" or "Waiver") related to such projects; provide Covered Entity with copies of such Authorizations or Waivers, subject to confidentiality obligations owed to the sponsor of the study ("Required Documentation"); and disclose PHI for such Research provided that Business Associate does not receive Covered Entity's disapproval in writing within ten (10) days of Covered Entity's receipt of Required Documentation.

4.6 Make PHI available for reviews preparatory to Research and obtain and maintain written representations in accord with 45 C.F.R. 164.512(i)(1)(ii) that the requested PHI is sought solely as necessary to prepare a Research protocol or for similar purposes preparatory to Research, that the PHI is necessary for the Research, and that no PHI will be removed from the location in which it is being held on behalf of the Covered Entity in the course of the review.

4.7 Use the PHI to create a Limited Data Set ("LDS") in compliance with 45 C.F.R. 164.514(e).

4.8 Use and disclose the LDS referenced in Section 4.7 solely for Research, Health Care Operations, or Public Health purposes provided that Business Associate shall: (1) not use or further disclose the information other than as permitted by this Section 4.8 or as otherwise Required by Law; (2) use appropriate safeguards to prevent use or disclosure of the information other than as provided for by this Section 4.8; (3) report to Covered Entity any use or disclosure of the information not provided for by this Section 4.8 of which Business Associate becomes aware; (iv) ensure that any agents or subcontractors to whom Business Associate provides the LDS agree to the same restrictions and conditions that apply to Business Associate with respect to such information; and (v) not identify the information or contact the individuals.

## **5. TERM, TERMINATION, COOPERATION, AND INDEMNIFICATION**

5.1 Term. The Term of this BAA shall be effective as of the Effective Date, and shall terminate upon the final expiration of the contract or business arrangement unless earlier terminated in accordance with Section 5.2 of this BAA.

5.2 Termination. If either Party knows of a pattern of activity or practice of the other Party that constitutes a material breach or violation of this BAA then the non-breaching Party shall provide written notice of the breach or violation to the other Party that specifies the nature of the breach or violation. The breaching Party must cure the breach or end the violation on or before sixty (30) days after receipt of the written notice. In the absence of a cure reasonably satisfactory to the non-breaching Party within the specified time frame, or in the event the breach is reasonably incapable of cure, then the non-breaching Party may do the following:

- (1) If feasible, terminate the Agreement, including this BAA; or
- (2) If termination of the Agreement is infeasible, report the issue to HHS.

5.3 Effect of Termination or Expiration. Within sixty (60) days after the termination or expiration of the contract and/or this BAA, Business Associate shall return or destroy all PHI, if feasible to do so, including all PHI in possession of Business Associate's agents or subcontractors. If Business Associate determines that return or destruction of the PHI is not feasible, Business Associate may retain the PHI subject to this Section 5.3. Under any circumstances, Business Associate shall extend any and all protections; limitations and restrictions contained in this BAA to Business Associate's use and/or disclosure of any PHI retained after the termination or expiration of this BAA, and shall limit any further uses and/or disclosures solely to the purposes that make return or destruction of the PHI infeasible.

5.4 Cooperation. Each Party shall cooperate in good faith in all respects with the other Party in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry.

## **6. MISCELLANEOUS**

6.1 Scope of BAA. This BAA relates only to the use, disclosure and protection of PHI if it is disclosed to, created or received by Business Associate in connection with any relation between Business Associate and Covered Entity, is the sole understanding between the parties relating to such matters, and supersedes all prior BAAs and understandings, whether oral or written.

6.2 Contradictory Terms; Construction of Terms. The terms of this BAA to the extent they are unclear shall be construed to allow for compliance by Covered Entity and Business Associate with HIPAA and ARRA.

6.3 No Third Party Beneficiaries. Nothing in this BAA shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

6.4 Survival. Sections 4.8, 5.3, 5.4, 6.2, 6.3 and 6.4 shall survive the termination for any reason or expiration of this BAA or the BAA.

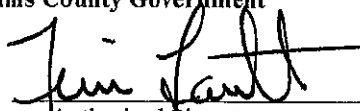
6.5 Independent Contractor. Business Associate and Covered Entity are and shall remain independent contractors throughout the term. Nothing in this BAA shall be construed to constitute Business Associate and Covered Entity as partners, joint venturers, agents or anything other than independent contractors.

Approved as to form:


  
County Attorney's Office

The parties, by signing below, agree to this Business Associate Agreement.

**Adams County Government**

By   
Authorized Signature  
Print Name Terri Hautt  
Print Title HR Director  
Date 7/5/18

**United HealthCare Services, Inc.**

By   
Authorized Signature  
Print Name B Renee Feagan  
Print Title Regional Contract Manager  
Date July 9, 2018