

## BUSINESS ASSOCIATE AGREEMENT

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the City of Fort Lauderdale, a Florida municipality (hereinafter referred to as the "Covered Entity" or "City") and Connecticut General Life Insurance Company, a Connecticut corporation authorized to transact business in the State of Florida (hereinafter referred to as "Business Associate").

WHEREAS, the Covered Entity and the Business Associate have established a business relationship in which Business Associate, acting for or on behalf of Covered Entity, receives Protected Health Information as defined by the Health Insurance Portability and Accountability Act of 1996 ("Act"); and

WHEREAS, the Covered Entity and the Business Associate desire to comply with the requirements of the Act's Privacy Rule as further set out below.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, the Covered Entity and the Business Associate agree as follows:

1. Definitions

a. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy and Security Rules ("Privacy Rule"), as codified in 45 Code of Federal Regulations Parts 160 through 164, as may be amended.

2. Obligations and Activities of Business Associate

a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.

b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

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

d. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.

e. Business Associate agrees to ensure that any agent or subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

f. Business Associate agrees to provide access, at the request of an Individual or Covered Entity, and in a reasonable time and manner, to Protected Health Information in a Designated Record Set, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524, if the Business Associate has Protected Health Information in a Designated Record Set.

g. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity or an Individual, in a reasonable time and manner, if Business Associate has Protected Health Information in a Designated Record Set, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.526..

h. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health

Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary, in a reasonable time and manner or as designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

i. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

j. Business Associate agrees to provide to an Individual, within thirty (30) days of receipt of a written request from the Covered Entity or an Individual, information collected in accordance with Section 2.i of this Agreement, to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

k. Sections 164.308, 164.310, 164.312, and 164.316 of Title 45, Code of Federal Regulations, shall apply to Business Associate in the same manner that such sections apply to Covered Entity.

l. Business Associate shall comply with the privacy, security, and security breach notification provisions applicable to a business associate pursuant to Subtitle D of the Health Information Technology for Economic and Clinical Health Act which is Title XIII of Division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), 42 U.S.C.A. §17921 *et seq.* (2013), as may be amended or revised, ("HITECH"), any regulations promulgated thereunder, and any amendments to the Privacy Rule, all of which are hereby incorporated herein by reference.

For purposes of discovery and reporting of Breaches, Business Associate is not the agent of the Plan or the Employer (as "agent" is defined under common law). Business Associate will investigate Breaches, assess their impact under applicable state and federal law, including HITECH, and make a recommendation to the Plan as to whether notification is required pursuant to 45 C.F.R. §§164.404-408 and/or applicable state breach notification laws. With the Plan's prior approval, Business Associate will issue notices to such individuals, state and federal agencies - including the Department of Health and Human Services, and/or the media as the Plan is required to notify pursuant to, and in accordance with the requirements of Applicable Law (including 45 C.F.R. §§164.404-408). Business Associate will pay the costs of issuing notices required by law and other remediation and mitigation which, in Business Associate's discretion, are appropriate and necessary to address the Breach. Business Associate will not be required to issue notifications that are not mandated by Applicable Law. Business Associate shall provide the Plan with information necessary for the Plan to fulfill its obligation to report Breaches affecting fewer than 500 Individuals to the Secretary as required by C.F.R. §164.408(c).

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

a. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement for Prescription Drug Services for City Employees, No. 125-10862, between the City of Fort Lauderdale and the Business Associate ("Original Contract"), provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

### 4. Specific Use and Disclosure Provisions

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

b. Except as otherwise limited in this Agreement, Business Associate may disclose

Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

c. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

d. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

e. Business Associate may use Protected Health Information to deidentify the information in accordance with 45 C.F.R. 164.514(a)-(c).

f. Business Associate may use Protected Health Information as required by law.

g. Business Associate agrees to make uses and disclosures and requests for Protected Health Information consistent with Business Associate's minimum necessary policies and procedures.

h. Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth above.

## 5. Obligations of Covered Entity

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

b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

c. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

## 6. Permissible Requests by Covered Entity

a. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except that Business Associate may use or disclose Protected Health Information for data aggregation or management and administrative activities of Business Associate if required by the terms of the Original Contract.

## 7. Term and Termination

a. The Term of this Agreement shall be effective as of the effective date of the Original Contract, and shall terminate when the Original Contract terminates. Upon termination, all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, shall be destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, or if it is illegal to destroy Protected Health Information, the protections are extended to such information, in accordance with the termination provisions in this Section.

b. Upon either party's knowledge of a material breach by the other party, the nonbreaching party shall either:

1. Provide an opportunity of at least thirty (30) days for the breaching party to cure the breach or end the violation and terminate this Agreement and the Original Contract if the breaching party does not cure the breach or end the violation within the time specified by the nonbreaching party;

2. Immediately terminate this Agreement and the Original Contract if the breaching party has breached a material term of this Agreement and cure is not possible; or

3. If neither termination nor cure is feasible, the nonbreaching party shall report the violation to the Secretary.

c. Effect of Termination

1. Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return, or destroy, except as prohibited by the Florida public records law, all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information

2. In the event that Business Associate's return or destruction of the Protected Health Information would be infeasible or illegal, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible or illegal, for so long as Business Associate maintains such Protected Health Information. Upon written request from the Covered Entity, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible or illegal. At all times Business Associate shall comply with the Florida public records law and exemptions therefrom, and applicable Florida records retention requirements.

8. Miscellaneous

a. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended or revised.

b. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity or Business Associate to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191. If the parties are unable to reach agreement regarding an amendment to this Agreement, either Business Associate or Covered Entity may terminate this Agreement upon ninety (90) days written notice to the other party.

c. The respective rights and obligations of Business Associate under Sections 7(c)(1) and 7(c)(2) of this Agreement shall survive the termination of this Agreement.

d. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

e. Business Associate shall indemnify, hold harmless, and defend at Business Associate's expense, counsel being subject to Covered Entity's approval, the Covered Entity, and the Covered Entity's officers and employees (collectively "indemnitees"), against any and all claims, actions, lawsuits, damages, losses, liabilities, judgments, fines, penalties, costs, and expenses incurred by any of the indemnitees arising out of or in connection with Business Associate's or any of Business Associate's officers', employees', agents', or subcontractors' breach of this Agreement or any act or omission by Business Associate or by any of Business Associate's officers, employees, agents, or subcontractors, including Business Associate's failure to perform any of its obligations under the Privacy Rule. Business Associate shall pay any and all expenses, fines, judgments,

and penalties, including court costs and attorney fees, which may be imposed upon any of the indemnitees resulting from or arising out of Business Associate's or any of Business Associate's officers', employees', agents', or subcontractors' breach of this Agreement or other act or omission.

f. Venue for any lawsuit or any other legal proceedings brought by either party against the other party or otherwise arising out of this Agreement, shall be in Broward County, Florida, or, in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida, with appellate jurisdiction in the respective corresponding appellate tribunals.

g. Notwithstanding anything contained in this Agreement to the contrary, except as otherwise provided by federal law, Business Associate shall:

(1) Keep and maintain public records that ordinarily and necessarily would be required by Covered Entity in order to perform the Services.

(2) Provide the public with access to public records on the same terms and conditions that Covered Entity would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2014), as may be amended or revised, or as otherwise provided by law.

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(4) Meet all requirements for retaining public records and transfer, at no cost, to Covered Entity, all public records in possession of Business Associate upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to Covered Entity in a format that is compatible with Covered Entity's information technology systems.

#### Connecticut General Life Insurance Company Standard Business Associate Processes and Procedures

These Standard Business Associate Processes and Procedures apply to the pharmacy self-funded group health plan ("Plan") of the City of Fort Lauderdale ("Plan Sponsor") that has entered into a Pharmacy Administrative Services Only Agreement with Connecticut General Life Insurance Company ("Connecticut General"). The Plan and Connecticut General are parties to a Business Associate Agreement/Privacy Addendum. Unless otherwise defined, capitalized terms have the meaning provided therein, or if not defined in such agreement, as defined in 45 C.F.R. parts 142, 160, 162 and 164 ("HIPAA"), also known as the HIPAA Standards for Electronic Transactions, the HIPAA Security Standards, and the HIPAA Privacy Rule and/or the Health Information Technology for Economic and Clinical Health Act, which was included in the American Recovery and Reinvestment Act of 2009 (P.L. 111-5 ("ARRA")).

**Section 1. Access to PHI.** When an Individual requests access to PHI contained in a Designated Record Set and such request is made directly to the Plan or Plan Sponsor, the Plan shall forward the request to Connecticut General within five (5) business days of such receipt. Upon receipt of such request from the Plan, or upon receipt of such a request directly from an Individual, Connecticut General shall make such PHI available directly to the Individual within the time and manner required in 45 C.F.R. §164.524. The Plan delegates to Connecticut General the duty to determine, on behalf of the Plan, whether to deny access to PHI requested by an Individual and the duty to provide any required notices and review in accordance with the HIPAA Privacy Rule.

**Section 2. Availability of PHI for Amendment.**

(a) When an Individual requests amendment to PHI contained in a Designated Record Set, and such request is made directly to the Plan or Plan Sponsor, within five (5) business days of such receipt, the Plan shall forward such request to Connecticut General for handling, except that the Plan shall retain and handle all such requests to the extent that they pertain to Individually Identifiable Health Information (such as enrollment information) originated by the Plan, Plan Sponsor, or the Plan's other business associates. Connecticut General shall respond to such forwarded requests as well as to any such requests that it receives directly from Individuals as required by 45 C.F.R. §164.526, except that Connecticut General shall forward to the Plan for handling any requests for amendment of PHI originated

by the Plan, Plan Sponsor, or the Plan's other business associates.

- (b) With respect to those requests handled by Connecticut General under subparagraph (a) above, the Plan delegates to Connecticut General the duty to determine, on behalf of the Plan, whether to deny a request for amendment of PHI and the duty to provide any required notices and review as well as, in the case of its determination to grant such a request, the duty to make any amendments in accordance with the terms of the Privacy Rule. In all other instances, the Plan retains all responsibility for handling such requests, including any denials, in accordance with the HIPAA Privacy Rule.
- (c) Whenever Connecticut General is notified by the Plan that the Plan has agreed to make an amendment pursuant to a request that it handles under subparagraph (a) above, Connecticut General shall incorporate any such amendments in accordance with 45 C.F.R. §164.526.

**Section 3. Accounting of Disclosures.** When an Individual requests an accounting of disclosures of PHI held by Connecticut General directly to the Plan or Plan Sponsor, the Plan shall within five (5) business days of such receipt forward the request to Connecticut General to handle. Connecticut General shall handle such requests, and any such requests for an accounting of disclosures received directly from Individuals, in the time and manner as required in 45 C.F.R. §164.528.

**Section 4. Requests for Privacy Protection.** Connecticut General shall handle Individuals' requests made to it for privacy protection for PHI in Connecticut General's possession pursuant to the requirements of 45 C.F.R. §164.522. The Plan shall forward to Connecticut General to handle any such requests the Plan receives from Individuals that affect PHI held by Connecticut General.

**Section 5. General Provisions Regarding Requests.** Connecticut General may require that requests pursuant to Sections 1 through 4 above be made in writing and may create forms for use by Individuals in making such requests. When responding to an Individual's request as provided above, Connecticut General may inform the Individual that there may be other "protected health information" created or maintained by the Plan and/or the Plan's other business associates and not included in the Connecticut General's response. Connecticut General shall not be responsible for performing any duties described in the Business Associate Agreement with respect to any such other "protected health information." In carrying out its duties set forth herein, Connecticut General may establish such additional procedures and processes for requests from Individuals as permitted by the Privacy Rule.

**Section 6. Disclosure of PHI to the Plan Sponsor.** To the extent that the fulfillment of Connecticut General's obligations under the Administrative Services Agreement requires Connecticut General to disclose or provide access to PHI to Plan Sponsor or any person under the control of Plan Sponsor (including third parties), Connecticut General shall make such disclosure of or provide such access to PHI only as follows:

- (i) Connecticut General shall disclose Summary Health Information to any employee or other person under the control of Plan Sponsor (including third parties) upon the Plan Sponsor's written request for the purpose of obtaining premium bids for the provision of health insurance or HMO coverage for the Plan or modifying, amending or terminating the Plan; and
- (ii) If the Plan elects to provide PHI to the Plan Sponsor, Connecticut General shall disclose or make available PHI, other than Summary Health Information, at the written direction of the Plan to only those employees or other persons identified in the Plan documents and under the control of Plan Sponsor solely for the purpose of carrying out the Plan administration functions that Plan Sponsor performs for the Plan. Such employees or other persons (including third parties) will be identified by the Plan in writing (by name, title, or other appropriate designation) to Connecticut General as a

condition of disclosure of PHI pursuant to this Section 6(ii). The Plan may modify such list from time to time by written notice to Connecticut General.

**Section 7. Disclosures of PHI to Third Parties.** Upon the Plan's written request, Connecticut General will provide PHI to certain designated third parties who assist in administering the Plan and who are authorized by the Plan to receive such information solely for the purpose of assisting in carrying out Plan administration functions ("Designated Third Parties"). Such parties may include, but are not limited to, third-party administrators, consultants, brokers, auditors, successor administrators or insurers, and stop-loss carriers. As a condition to providing PHI to a Designated Third Party, Connecticut General may require that the Plan have a business associate agreement (within the meaning of the Privacy Rule) with such Designated Third Party.

IN WITNESS WHEREOF, the Covered Entity and the Business Associate execute this Business Associate Agreement as follows:

CITY OF FORT LAUDERDALE

By \_\_\_\_\_  
Lee R. Feldman, City Manager

Approved as to form:

\_\_\_\_\_  
Senior Assistant City Attorney

WITNESSES:

CONNECTICUT GENERAL LIFE INSURANCE COMPANY

\_\_\_\_\_  
(Signature)  
Print Name:

By \_\_\_\_\_  
(Signature)  
Print Name:  
Title:

\_\_\_\_\_  
(Signature)  
Print Name:

ATTEST:

\_\_\_\_\_  
Secretary

(CORPORATE SEAL)

STATE OF \_\_\_\_\_:  
COUNTY OF \_\_\_\_\_:

The foregoing Business Associate Agreement was acknowledged before me this day of \_\_\_\_\_, 2015, by \_\_\_\_\_ as (title): \_\_\_\_\_ for Connecticut General Life Insurance Company, a Connecticut corporation authorized to transact business in the State of Florida.

(SEAL)

Notary Public, State of \_\_\_\_\_  
(Signature of Notary Public - State of \_\_\_\_\_)

\_\_\_\_\_  
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_