

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”) is between HealthPlus of Michigan, Inc., a Michigan non-profit corporation and its subsidiaries (“Covered Entity”), and \_\_\_\_\_, (“Business Associate”), (each individually, a “Party,” and collectively, the “Parties”) for an effective date of \_\_\_\_\_, 20\_\_ (“Effective Date”).

WHEREAS, Business Associate has agreed to perform certain Services for or on behalf of Covered Entity, which Services may involve the use or disclosure of Protected Health Information within the meaning of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 45 CFR Parts 160 and 164 (“the Privacy and Security Rules”), and the Health Information Technology for Economic and Clinical Health Act of 2009, (the “HITECH Act”) and regulations promulgated there under as such law and regulations may be amended from time to time (collectively “HIPAA”). This Agreement is intended to satisfy the requirements for Business Associate Agreements as set forth in the Privacy Rule, including 45 CFR § 164.504(e) and the HITECH Act;

NOW THEREFORE, Business Associate hereby agrees to comply with applicable provisions of the Privacy and Security Rules and the HITECH Act and to assist Covered Entity with its compliance as explained below;

### 1. Definitions

- A. *Breach* means the acquisition, access, use or disclosure of PHI in a manner not permitted by HIPAA that compromises the security or privacy of the PHI as defined, and subject to the exceptions set forth in 45 CFR § 164.402.
- B. *Designated Record Set* means (1) enrollment, payment, claims adjudication, and case or medical management records maintained by or for Covered Entity; and (2) other records used by or for Covered Entity to make decisions about Individuals. See 45 CFR § 164.501. For the purposes of this paragraph, the term record means any item, collections, or grouping of information that includes protected health information and is maintained, collected used, or disseminated by or for a covered entity.
- C. *Electronic Protected Health Information (ePHI)* means PHI as defined in Section 1(F) herein that is transmitted or maintained in electronic media.
- D. *HITECH Act* means the “HITECH Act” the Health Information Technology for Economic and Clinical Health Act included in the American Recovery and Reinvestment Act of 2009.
- E. *Individual* means the person who is the subject of PHI, and any person who qualifies as a personal representative of such person in accordance with 45 CFR § 164.502(g). See 45 CFR § 160.103.
- F. *Protected Health Information (PHI)* means any information which is created or received by Business Associate from or on behalf of Covered Entity, whether oral or recorded in any form or medium, that relates to the past, present, or future physical or mental health or 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. See 45 CFR § 160.103.

- G. *Secretary* shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- H. *Services* as used in this Agreement, means, 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.
- I. Terms used but not otherwise defined in the Agreement shall be defined as set forth in 45 CFR Part 160 and Part 164, Subparts A, C and E, and the HITECH Act.

2. Obligations of Business Associate.

- A. Business Associate agrees to not Use or Disclose PHI other than as permitted or required by this Agreement, and in compliance with each applicable requirement of 45 CFR § 164.504(e) or as otherwise Required by Law.
- B. Business Associate agrees to use appropriate administrative, physical and technical safeguards to maintain the privacy of the PHI and to prevent inappropriate Use or Disclosure of the PHI, other than as provided for by this Agreement; that reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that Business Associate creates, receives, maintains, or transmits on behalf of the Covered Entity; and complies with the Security Rule requirements set forth in 45 CFR §§ 164.308, 164.310, 164.312, and 164.316.
- C. As required by 45 CFR § 164.530(f), Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this Agreement and HIPAA.
- D. Business Associate agrees to immediately report to Covered Entity in writing any Use or Disclosure of the PHI not provided for by this Agreement and/or in violation of HIPAA, of which it becomes aware in accordance with 45 CFR § 164.504(e)(2)(ii)(C), and/or any Security Incident of which Business Associate becomes aware of in accordance with 45 CFR § 164.314(a)(2)(i)(C). Such written notification shall include a description of the Breach, and a list of Individuals affected. With respect to any use or disclosure of Unsecured PHI not permitted by HIPAA that is caused solely by Business Associate's failure to comply with one or more of its obligations under this Agreement, Covered Entity hereby delegates to Business Associate and Business Associate hereby accepts the responsibility for determining when any such incident is a Breach and for providing all legally required notifications to Individual, 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 USC § 17932 and 45 CFR Parts 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.
- E. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any agent, including a subcontractor, to

whom it provides PHI or ePHI received from, created by or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate.

- F. Upon a request by Covered Entity, Business Associate agrees to provide access to PHI maintained in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524. Business Associate shall provide access to the PHI in the time and manner reasonably designated by Covered Entity.
- G. Upon a request by Covered Entity, or an Individual, and at Covered Entity's direction or agreement, Business Associate agrees to make any amendment(s) to PHI maintained in a Designated Record Set in order to meet the requirements under 45 CFR § 164.526. Business Associate shall act on the amendments in the time and manner reasonably designated by Covered Entity.
- H. Business Associate agrees to make its PHI and internal practices, books, and records, including policies and procedures, relating to the Use and Disclosure of PHI received from, created by or received by Business Associate on behalf of Covered Entity, available to the Covered Entity or to the Secretary for purposes of the Secretary determining Covered Entity's compliance with HIPAA. Business Associate shall make the documents available in the time and manner designated by Covered Entity or the Secretary, and Business Associate shall provide to Covered Entity a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.
- I. Business Associate agrees to document its Disclosures of PHI and information related to such Disclosures, and within thirty (30) days after receiving a written request from Covered Entity or an Individual, make available to Covered Entity or an Individual information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of Disclosures of PHI about an Individual, in accordance with 45 CFR § 164.528.
- J. Notwithstanding Section 2(I), Business Associate agrees that in event that the 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, make an accounting of Disclosures of PHI directly to an Individual within thirty (30) days, in accordance with the requirements for accounting for disclosures made through an Electronic Health Record in 42 USC 17935(c), as of its Compliance Date.
- K. Business Associate agrees to provide access, within thirty (30) days after receiving a written request from Covered Entity to PHI in a Designated Record Set about an Individual, to Covered Entity sufficient to allow Covered Entity to comply with the requirements of 45 CFR § 164.524.
- L. Notwithstanding Section 2(K), Business Associate agrees that in event that the 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 within thirty (30) days, to Covered Entity

sufficient to allow Covered Entity to comply with 42 USC 17935(e), as of its Compliance Date.

- M. Business Associate (and its agents or subcontractors) shall only request, Use and Disclose the minimum amount of PHI necessary to accomplish the purpose of the request, Use or Disclosure.
- N. Business Associate shall notify Covered Entity of any change(s) in Business Associate's internal practices and procedures, to the extent that such changes may affect Business Associate's use and disclosure of PHI and such changes shall be subject to the approval by Covered Entity.
- O. Business Associate shall comply with the additional requirements set forth in the HITECH Act.
- P. Pursuant to Federal regulations and Federal and/or State agency reporting requirements, Business Associate agrees to attest to safeguard and protect beneficiary's PHI and ePHI for offshore subcontracting (see Exhibit A).

3. Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in this Agreement, Business Associate may Use or Disclose PHI to perform functions, activities, or Services for, or on behalf of, Covered Entity, provided that such Use or Disclosure would not violate HIPAA if done by Covered Entity.

4. Specific Use and Disclosure Provisions

- A. Except as otherwise limited in this Agreement, Business Associate may Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- B. Except as otherwise limited in this Agreement, Business Associate may Disclose PHI for the proper management and administration of the Business Associate, provided that such 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 agrees to notify 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 PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).
- D. Business Associate may Use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).
- E. In the event Business Associate receives a subpoena, court order or other legal process which mandates the disclosure of PHI, Business Associate agrees to promptly notify and allow the Covered Entity to respond to such legal process.

- F. Business Associate acknowledges and agrees that any and all PHI which Covered Entity provides to Business Associate is owned by Covered Entity, and Business Associate has no ownership rights with respect to the PHI.

5. Obligations of Covered Entity

- A. Upon request, Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity's Notice of Privacy Practices in accordance with 45 CFR § 164.520, to the extent that such limitation(s) may affect Business Associate's Use or Disclosure of PHI.
- B. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI, to the extent that such changes may affect Business Associate's Uses and Disclosure of PHI.
- C. Covered Entity shall notify Business Associate of any restriction to the Use or Disclosure of an Individual's PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.
- D. Covered Entity shall provide Business Associate only the minimum PHI necessary to accomplish the Services.
- E. Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement or HIPAA will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

6. Permissible Requests by Covered Entity.

Covered Entity shall not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under the Privacy and Security Rules or HITECH Act if done by Covered Entity.

7. Term and Termination.

- A. Term. The Term of this Agreement shall be effective as of the Effective Date and shall terminate on the later of when the last of the Parties' related agreements for Business Associate's Services terminate, or when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or if it is not feasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provision in this section.
- B. Termination for Cause. Upon Covered Entity's knowledge of a material Breach by Business Associate, Covered Entity shall either:
  - (1) Provide a reasonable opportunity for Business Associate to cure the Breach or end the violation and, if Business Associate fails to cure the Breach or end the violation within the time specified by the Covered Entity, Covered

Entity shall terminate this Agreement and all related agreements for Business Associate's Services involving the use or disclosure of PHI;

- (2) Immediately terminate this Agreement together with any related agreement for Business Associate's Services involving the use and disclosure of PHI if Business Associate has breached a material term of this Agreement, and if cure is not possible, Covered Entity shall be entitled to seek any and all available remedies to compensate it for any damages, losses, costs, and/or expenses it incurs; or
- (3) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- (4) Business Associate acknowledges that remedies at law for the Breach or violation of this Agreement by Business Associate may be inadequate and, therefore, Covered Entity shall also be entitled to injunctive relief, and to all costs and expenses, including reasonable attorney's fees, relating to the pursuit of such injunctive relief. Such injunctive relief shall not be exclusive, but shall be in addition to any other rights and remedies that Covered Entity may have for such Breach or violation.

C. Effect of Termination.

- (1) Except as provided in paragraph 2 of this section, within sixty (60) days upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate and its subcontractors or agents shall retain no copies of PHI.
- (2) If Business Associate reasonably determines that returning or destroying PHI is infeasible, Business Associate shall provide to Covered Entity notification in writing of the conditions that make return or destruction infeasible. Upon Covered Entity's determination that return or destruction of PHI is infeasible; Business Associate shall extend the protections, limitations and restrictions of this Agreement to such PHI and limit further Uses and Disclosures of such PHI retained to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. In addition, Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to ePHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI.

8. Insurance and Indemnification

- A. Insurance. During the term of this Agreement, Business Associate shall maintain in force, at its own expense, general liability insurance with limits of at least one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) aggregate to cover any and all claims, causes of action, and demands whatsoever made by Covered Entity for loss, damage, or injury to any person arising from the

Breach of the security, privacy, or confidentiality obligations under this Agreement by Business Associate, its subcontractors, agents or employees. Business Associate shall provide a certificate of insurance to Covered Entity upon request.

- B. Indemnification. In addition to any indemnification obligations undertaken by Business Associate under the Parties' separate agreement for services, Business Associate shall indemnify, defend, and hold harmless Covered Entity from any and all claims, causes of action, and demands whatsoever made for loss, damage, or injury to any person to the extent caused by the breach by Business Associate, or its agents, subcontractors, or employees, of the security, privacy or confidentiality obligations set forth under this Agreement.

9. Miscellaneous.

- A. Regulatory References. A reference in this Agreement to a section in HIPAA means the section as in effect or as amended, and for which compliance is required.
- B. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA.
- C. Survival. The rights and obligations of Business Associate under the termination provision of this Agreement shall survive the termination of this Agreement.
- D. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA.
- E. Notices. All notices and other communications required or permitted under this Agreement will be in writing and will be deemed given when delivered personally or by registered or certified mail (return receipt requested), addressed as follows (or any other address that is specified in writing by either Party):

Attention: _____ _____ _____ _____	Attention: HealthPlus of Michigan, Inc. 2050 South Linden Road P.O. Box 1700 Flint, Michigan 48501-1700
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- F. Governing Law. This Agreement will be governed by and enforced in accordance with the laws of the State of Michigan and applicable federal laws.
- G. Severability. In the event any provision of this Agreement is declared null and void by any tribunal with appropriate jurisdiction, the remainder of the provisions of this Agreement will remain in full force and effect.
- H. Non-Assignability. Neither Covered Entity nor Business Associate will assign, sell, or otherwise transfer this Agreement or any interest therein.

- I. Waiver. The waiver of any provision on any occasion by either Party will not constitute a release or modification of that provision in the future.
- J. Counterparts and Signatures. This Agreement may be executed in any number of counterparts, each of which will be deemed an original and constitute one and the same instrument. Further, execution by use of facsimile or electronically scanned signatures will have the same force and effect as original signatures.
- K. To the extent the Business Associate is to carry out one or more of the Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
- L. More Restrictive Confidentiality Terms. Covered Entity and Business Associate agree that if any provisions of the agreement that relate to the Use and Disclosure of PHI are more restrictive than the provisions of this Agreement, meaning that the terms provide greater privacy protections for the PHI at issue, then the provisions of the more restrictive document shall control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's Use and Disclosure of PHI.
- M. State Law. Where the mandatory terms of HIPAA or this Agreement conflict with obligations imposed under *state law* (as defined by HIPAA) relating to the privacy of individually identifiable information and state law is *more stringent* (as defined by HIPAA) than this Agreement or HIPAA, Business Associate shall follow the state law with regard to the proper Uses and Disclosures of PHI. However, prior to taking any action in furtherance of a state law the Business Associate has interpreted is contrary to and more stringent than this Agreement or HIPAA, Business Associate shall notify Covered Entity in writing of its interpretation. If Covered Entity disagrees with the Business Associate's interpretation and believes either that Business Associate is able to comply with state law and this Agreement (and HIPAA), or that HIPAA (and not state law) controls the Use and Disclosure of PHI, then Covered Entity's interpretation shall prevail with respect to the creation, receipt, Use or Disclosure of PHI in connection with the Services provided by Business Associate to Covered Entity under the Agreement.
- N. No Third-Party Beneficiaries. Nothing in this Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.



N. Independent Contractor. Business Associate or its subcontractors and Covered Entity are and shall remain independent contractors throughout the term. Nothing in this Agreement or otherwise in any other agreement shall be construed to constitute Business Associate or its subcontractors and Covered Entity as partners, joint venturers, agents or anything other than independent contractors.

AGREED TO ON BEHALF OF  
HEALTHPLUS OF MICHIGAN, INC.

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

AGREED TO ON BEHALF OF

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

**EXHIBIT A  
CERTIFICATION OF COMPLIANCE  
ATTESTATION OF SAFEGUARDS TO PROTECT BENEFICIARY INFORMATION IN THE  
OFFSHORE SUBCONTRACT**

Name of HealthPlus Contractor: <i>(Entity)</i>	
Address:	
Email:	
Telephone:	
Signature:	
Printed Name:	
Title:	
Date:	

**Do you utilize offshore subcontractors?**

Pursuant to Federal regulations and Federal and/or State agency reporting requirements, an offshore subcontractor is defined as the following: The term “subcontractor” refers to any organization that a Medicare Advantage Organization or Part D sponsor contracts with to fulfill or help fulfill requirements in their Part C and/or Part D contracts. Subcontractors include all first-tier, downstream and/or related entities. The term “offshore” refers to any country that is not one of the fifty United States or one of the United States territories (American Samoa, Guam, Northern Marianas, Puerto Rico, and Virgin Islands). Examples of countries that meet the definition of “offshore” include Mexico, Canada, India, Germany, and Japan. Subcontractors that are considered offshore can be either American-owned companies with certain portions of their operations performed outside of the United States or foreign-owned companies with their operations performed outside of the United States. Offshore subcontractors provide services that are performed by workers located in offshore countries, regardless of whether the workers are employees of American or foreign companies.

I hereby certify that *(Entity)* \_\_\_\_\_

**does / does not** provide an offshore subcontractor/organization with HealthPlus beneficiary information.

***\*If Entity does provide beneficiary information to an offshore contractor, please complete the following information:***

***If a new offshore subcontractor is added, the full Offshore Subcontract Attestation must be completed and sent to HealthPlus within twenty (20) calendar days from the date the contract is signed with the offshore subcontractor/organization.***

Offshore subcontractor’s name:	
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Offshore subcontractor's country:	
Offshore subcontractor's address:	
Offshore subcontractor's function:	
Proposed/actual effective dates for offshore contractor's use of PHI:	
Description of protected health information (PHI) provided to the offshore subcontractor.	
Explain why providing the PHI to the offshore contractor is necessary.	
Describe alternatives considered to avoid providing the PHI and why each alternative was rejected.	
Offshore subcontracting arrangement has policies and procedures in place to ensure that PHI and other personal information remains secure. <b><i>If yes, please provide documentation.</i></b>	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes: List attached documentation:
Offshore subcontracting arrangement has policies and procedures in place that allow for immediate termination of the subcontract upon discovery of a significant security breach. <b><i>If yes, please provide documentation.</i></b>	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes: List attached documentation
Offshore subcontracting arrangement prohibits subcontractor's access to Medicare data not associated with the Entity's contract with the offshore subcontractor.	Yes <input type="checkbox"/> No <input type="checkbox"/>
Offshore subcontracting arrangement includes all required Medicare Part C and D language (e.g., record retention requirements, compliance with all Medicare Part C and D requirements, etc.) <b><i>If yes, please provide documentation.</i></b>	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes: List attached documentation