

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), effective _____, 2003 (“Effective Date”), is entered into by and between NEW YORK HEALTH PURCHASING ALLIANCE A/K/A HEALTHPASS (the “Covered Entity”), with an address at 386 Park Avenue South, Suite 703, New York, New York 10016-8804 and [Broker] _____ (the “Business Associate”), with an address at _____ (each a “Party” and collectively the “Parties”).

WITNESSETH:

WHEREAS, the U.S. Department of Health and Human Services (“HHS”) has issued final regulations, pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), governing the privacy of individually identifiable health information obtained, created or maintained by certain entities, including health plans (the “HIPAA Privacy Rule”); and

WHEREAS, the HIPAA Privacy Rule requires that the Covered Entity enter into this Agreement with the Business Associate in order to protect the privacy of individually identifiable health information maintained by the Covered Entity (“Protected Health Information,” or PHI”); and

WHEREAS, the Business Associate and its employees, affiliates, agents or representatives may access paper and/or electronic records containing PHI in carrying out their obligations to the Covered Entity pursuant to either an existing or contemporaneously executed agreement for brokerage services (“Brokerage Agreement”); and

WHEREAS, the Parties desire to enter into this Agreement to protect PHI, and to amend any agreements between them, whether oral or written, with the execution of this Agreement;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and agreements contained herein the Parties agree as follows:

1. Brokerage Agreements

- 1.1. Existing Brokerage Agreements. The Covered Entity and the Business Associate are parties to the Brokerage Agreement executed prior to the Effective Date and currently in effect.

All existing Brokerage Agreements between the Parties are incorporated herein by reference and are hereby amended by this Agreement. In the event of conflict between the terms of any Brokerage Agreement and this Agreement, the terms and conditions of this Agreement shall govern.

- 1.2. Contemporaneous Brokerage Agreement. In the event that the Covered Entity and the Business Associate are not parties to a Brokerage Agreement existing

prior to the Effective Date, but instead enter into a Brokerage Agreement contemporaneously with the execution of this Agreement, such agreement shall be attached hereto as Exhibit A, and incorporated herein by reference. In the event of conflict between the terms of the Brokerage Agreement and this Agreement, the terms and conditions of this Agreement shall govern.

- 1.3. Use and Disclosure of PHI to Provide Services. The Business Associate will not use or further disclose PHI (as such term is defined in the HIPAA Privacy Rule) other than as permitted or required by the terms of the Service Agreement or as required by law. Except as otherwise provided herein, the Business Associate may make any and all uses of PHI necessary to perform its obligations under the applicable Brokerage Agreement. All other uses not authorized by this Agreement are prohibited.

2. Additional Business Associate Activities

Except as otherwise provided in this Agreement, the Business Associate may also:

- 2.1. Use the PHI in its possession for its proper management and administration and/or to fulfill any present or future legal responsibilities of the Business Associate, provided that such uses are permitted under state and federal confidentiality laws.
- 2.2. Disclose the PHI in its possession for the purpose of its proper management and administration and/or to fulfill any present or future legal responsibilities of the Business Associate. The Business Associate warrants and represents to the Covered Entity that (i) any disclosure it makes will be permitted under applicable laws, and (ii) the Business Associate will obtain reasonable written assurances from any person to whom the PHI will be disclosed that the PHI will be held confidentially and used or further disclosed only as required and permitted under the HIPAA Privacy Rule and other applicable laws, and that any such person agrees to be governed by the same restrictions and conditions contained in this Agreement, and that such person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.
- 2.3. Aggregate the Covered Entity's PHI in the Business Associate's possession with the PHI of other covered entities that the Business Associate has in its possession through its capacity as a Business Associate to such other covered entities, provided that the purpose of such aggregation is to provide the Covered Entity with data analyses relating to its Health Care Operations, as such term is defined in the HIPAA Privacy Rule. The Business Associate will not disclose the PHI obtained from the Covered Entity to another covered entity absent written authorization from the Covered Entity.
- 2.4. De-identify any and all PHI provided that the de-identification conforms to the requirements of applicable law as provided for in 45 C.F.R. § 164.514(b) and that the Business Associate maintains such documentation as required by applicable

law, as provided for in 45 C.F.R. § 164.514(b). The Parties understand that properly de-identified information is not PHI under the terms of this Agreement.

3. Business Associate Covenants

The Business Associate covenants to:

- 3.1. use or further disclose the minimum necessary PHI in performing the activities called for under the Brokerage Agreement;
- 3.2. not to use or further disclose PHI except as permitted under this Agreement, the HIPAA Privacy Rule, and applicable State law, each as amended from time to time;
- 3.3. use appropriate administrative, technical and physical safeguards to prevent the use or disclosure of PHI other than as provided for in this Agreement;
- 3.4. report to the Covered Entity any use or disclosure of the PHI not permitted by this Agreement of which it becomes aware; such report to be made in writing within five (5) days of the Business Associate becoming aware of such use or disclosure;
- 3.5. in conjunction with the requirements of **Section 2.2**, ensure that any subcontractors or agents to whom it provides PHI received from, or created or received by the Business Associate on behalf of the Covered Entity, agree to the same restrictions and conditions that apply to the Business Associate with respect to such information;
- 3.6. within ten (10) days of a request by the Covered Entity, report to the Covered Entity all disclosures of PHI to a third party for a purpose other than Treatment, Payment or Health Care Operations, as such terms are defined in the HIPAA Privacy Rule. The report to the Covered Entity shall identify: (i) the subject of the PHI (i.e., patient name or identifier), (ii) the PHI disclosed, and (iii) the purpose of the disclosure in accordance with the accounting requirements of 45 C.F.R. § 164.528;
- 3.7. maintain the integrity of any PHI transmitted by or received from the Covered Entity;
- 3.8. comply with the Covered Entity policies and procedures with respect to the privacy and security of PHI and other the Covered Entity records, as well as policies and procedures with respect to access and use of the Covered Entity's equipment and facilities;
- 3.9. provide the rights of access, amendment, and accounting as set forth in **Sections 5, 6 and 7**.

4. Covered Entity Covenants

The Covered Entity covenants to notify the Business Associate of material limitations to the consents or authorizations as have been obtained by the Covered Entity from individuals and any other restrictions on the use or disclosure of PHI as agreed to by the Covered Entity.

5. Access to PHI

Within five (5) days of a request by the Covered Entity for access to PHI about an individual contained in a Designated Record Set, as such term is defined in the HIPAA Privacy Rule, the Business Associate shall make available to the Covered Entity, or the individual to whom such PHI relates or his or her authorized representative, such PHI for so long as such information is maintained in the Designated Record Set as defined in 45 C.F.R. § 164.524. In the event any individual requests access to PHI directly from the Business Associate, the Business Associate shall, within five (5) days, forward such request to the Covered Entity. Any denials of access to the PHI requested shall be the responsibility of the Covered Entity.

6. Amendment of PHI

Within ten (10) days of receipt of a request from the Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set, the Business Associate shall, as required by 45 C.F.R. § 164.526, incorporate any such amendments in the PHI; provided, however, that the Covered Entity has made the determination that the amendment(s) is/are necessary because the PHI that is the subject of the amendment(s) has been, or foreseeably could be, relied upon by the Business Associate or others to the detriment of the individual who is the subject of the PHI to be amended. The obligation in this **Section 6** shall apply only for so long as the PHI is maintained by the Business Associate in a Designated Record Set.

7. Accounting for Disclosures of PHI

Within thirty (30) days of notice by the Covered Entity to the Business Associate that it has received a request for an accounting of disclosures of PHI regarding an individual, the Business Associate shall make available to the Covered Entity such information as is in the Business Associate's possession and is required for the Covered Entity to make the accounting required by 45 C.F.R. § 164.528. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within five (5) days, forward such request to the Covered Entity. It shall be the Covered Entity's responsibility to prepare and deliver any such accounting requested.

8. Access to Books and Records Regarding PHI

The Business Associate will make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining the Covered Entity compliance with the HIPAA Privacy Rule.

9. Disposition of PHI Upon Termination

The Business Associate will, at termination or expiration of the Brokerage Agreement, if feasible, return or destroy all PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity which the Business Associate and/or its subcontractors or agents still maintain in any form, and will not retain any copies of such information. If such return or destruction is not feasible, the Business Associate will notify the Covered Entity of such event in writing, and will thereupon extend the protections of this Agreement to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible.

10. Independent Contractor Relationship

No provision of this Agreement is intended to create, nor shall be deemed or construed to create, any employment, agency or joint venture relationship between the Covered Entity and the Business Associate other than that of independent entities contracting with each other hereunder solely for the purpose of effectuating the provisions of this Agreement. None of the Parties nor any of their respective representatives shall be construed to be the agent, employer, or representative of the other.

11. Security Standards.

11.1. On or before the effective date of the HIPAA Regulations relating to Security Standards, 45 C.F.R. 164, *et seq.* (the "Security Rule"), which is currently to occur on April 20, 2005, the Business Associate agrees to:

- (a) implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic protected health information that it creates, receives, maintains or transmits on behalf of the Covered Entity as required by the Security Rule;
- (b) ensure that any agent, including a subcontractor, to whom the Business Associate provides such information agrees to implement reasonable and appropriate safeguards to protect it;
- (c) report to the Covered Entity any security incident of which it becomes aware; and
- (d) the Brokerage Agreement may be terminated by the Covered Entity if it determines that the Business Associate has violated a material term of this Section.

12. Representations and Warranties

12.1. Mutual Representations and Warranties of the Parties.

Each Party represents and warrants to the other Party:

(a) that it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized or licensed, it has the full power to enter into this Agreement and to perform its obligations hereunder, and that the performance by it of its obligations under this Agreement have been duly authorized by all necessary corporate or other actions and that such performance will not violate any provision of any organizational charter or bylaws.

(b) that neither the execution of this Agreement, nor its performance hereunder, will directly or indirectly violate or interfere with the terms of another agreement to which it is a party, or give any governmental entity the right to suspend, terminate, or modify any of its governmental authorizations or assets required for its performance hereunder.

(c) that all of its employees, agents, representatives and members of its workforce, whose services may be used to fulfill obligations under this Agreement are or shall be appropriately informed of the terms of this Agreement and are under legal obligation to each Party, respectively, by contract or otherwise, sufficient to enable each Party to fully comply with all provisions of this Agreement.

(d) that it will reasonably cooperate with the other Party in the performance of the mutual obligations under this Agreement.

13. Term

Unless otherwise terminated as provided in **Section 14**, this Agreement shall become effective on the Effective Date and shall have a term that shall run concurrently with that of the Brokerage Agreement.

14. Termination

14.1. Generally. This Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the Brokerage Agreement; provided, however, certain provisions and requirements of this Agreement shall survive such expiration or termination in accordance with **Section 13**.

14.2. Termination by the Covered Entity. As provided for under 45 C.F.R. § 164.504(e)(2)(iii), the Covered Entity may immediately terminate this Agreement, the Brokerage Agreement and any related agreements if the Covered Entity makes the determination that the Business Associate has breached a material term of this Agreement. Alternatively, and in the sole discretion of the Covered Entity, the Covered Entity may choose to provide the Business Associate with written notice of the existence of the breach and provide the Business Associate with thirty (30) calendar days to cure said breach upon mutually agreeable terms. In the event that mutually agreeable terms cannot be reached within this thirty (30) day period, the Business Associate shall cure said breach to the satisfaction of the Covered

Entity within an additional fifteen (15) days. Failure by the Business Associate to cure said breach or violation in the manner set forth above shall be grounds for immediate termination of the Brokerage Agreement by the Covered Entity. If termination is not feasible, the Covered Entity has the right to report the problem to the Secretary of the U.S. Department of Health and Human Services.

- 14.3. Termination by the Business Associate. If the Business Associate determines that the Covered Entity has breached a material term of this Agreement, then the Business Associate shall provide the Covered Entity with written notice of the existence of the breach and shall provide the Covered Entity with thirty (30) calendar days to cure said breach upon mutually agreeable terms. In the event that mutually agreeable terms cannot be reached within this (30) day period, the Covered Entity shall cure said breach to the satisfaction of the Business Associate within an additional fifteen (15) days. Failure by the Covered Entity to cure said breach or violation in the manner set forth above shall be grounds for immediate termination of the Brokerage Agreement by the Business Associate.

15. Effect of Termination

Upon termination pursuant to **Section 14**, the Business Associate agrees to return or destroy all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I), if it is feasible to do so. Prior to doing so, the Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. If it is not feasible for the Business Associate to return or destroy all PHI, the Business Associate will notify the Covered Entity in writing. Such notification shall include: (i) a statement that the Business Associate has determined that it is infeasible to return or destroy the PHI in its possession, and (ii) the specific reason for such determination. The Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to the Business Associate's use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. If it is infeasible for the Business Associate to obtain from a subcontractor or agent any PHI in the possession of the subcontractor or agent, the Business Associate must provide a written explanation to the Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

16. Amendments; Waiver

This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. The failure of either Party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or the right of either Party thereafter to enforce each and every such provision.

Notwithstanding the foregoing, this Agreement shall be deemed amended to comply with HIPAA in the event of a change in the law, regulation or interpretation, and the Parties agree that they shall negotiate and execute an amendment to this Agreement as soon as reasonably practicable following notification of such change in law.

17. No Third Party Beneficiaries

Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever. Nothing in this Agreement shall be construed to create any third party beneficiary rights in any person.

18. Attorney Client Privilege.

Nothing herein contained shall be construed to modify, impair or diminish either Party's attorney client privilege.

19. Notices

Any notice required or permitted under this Agreement shall be given in writing and delivered by hand, via a nationally recognized overnight delivery service (e.g., Federal Express), or via registered mail or certified mail, postage prepaid and return receipt requested, to the following:

Covered Entity:

New York Health Purchasing Alliance
386 Park Avenue South, Suite 703
New York, New York 10016-8804
Attn: Privacy Official

Business Associate:

Attn: _____

Notice of a change in address of one of the Parties shall be given in writing to the other Party as provided above.

20. Interpretation

In the event of a dispute as to the meaning of any provision hereof, the Parties acknowledge and agree that it shall be interpreted so as to allow the Covered Entity to be in compliance with the requirements of HIPAA.

21. Counterparts; Facsimiles

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

22. Disputes

If any controversy, dispute or claim arises between the Parties with respect to this Agreement, the Parties shall make good faith efforts to resolve such matters informally.

INTENDING TO BE LEGALLY BOUND, the Parties hereto have duly executed this Agreement as of the Effective Date.

New York Health Purchasing Alliance

Business Associate

Signed: _____

Signed: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____