

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)  
BUSINESS ASSOCIATE AGREEMENT

THIS Business Associate Agreement (“BA Agreement”), effective as of January 1, 2017 (“Effective Date”), is entered into between Aetna Life Insurance Company, on behalf of itself and those of its affiliates providing services in connection with this BA Agreement (“Business Associate”) and County of Hidalgo on behalf of the County of Hidalgo (“Covered Entity”). County of Hidalgo represents that it has the authority to agree to the terms and conditions of this BA Agreement for and on behalf of Covered Entity for which Business Associate provides plan administration services under current or future agreements between the parties (“Services Agreement”). For purposes of this BA Agreement, “Business Associate” includes only those subsidiaries and affiliates of Aetna Life Insurance Company that create, receive, transmit or otherwise maintain Protected Health Information, as defined below, in connection with this Agreement.

In conformity with the Administrative Simplification provisions of Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996, as amended, including but not limited to the requirements under the Health Information Technology for Economic and Clinical Health Act (“HITECH”), the implementing regulations at 45 CFR Parts 160-64 (the “Privacy and Security Rules”), and related public guidance issued by the Department of Health and Human Services (all of the foregoing, collectively, “HIPAA”), Business Associate will under the following terms and conditions have access to, maintain, transmit, create and/or receive certain Protected Health Information:

1. Definitions. Capitalized terms used and not otherwise defined in this BA Agreement shall have the meanings assigned to such terms by HIPAA. (a) Individual. “Individual” shall have the same meaning as the term “individual” in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g), but shall be limited to persons who are participants enrolled in, are seeking to become enrolled in, or were previously enrolled in the plan administered under the Services Agreement.  
(b) Protected Health Information. “Protected Health Information” shall have the same meaning as the term “Protected Health Information”, as defined by 45 CFR 160.103, limited to the information created, maintained, transmitted, or received by Business Associate from or on behalf of Covered Entity.  
(c) Standard Transactions. “Standard Transactions” means the electronic health care transactions for which HIPAA standards have been established, as set forth in 45 CFR, Parts 160-162.
2. Obligations and Activities of Business Associate
  - (a) Business Associate agrees to not use or disclose Protected Health Information other than
    - (i) for purposes of performing its obligations under the Services Agreement,
    - (ii) as otherwise permitted or required by this BA Agreement, or
    - (iii) 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 BA 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 BA Agreement.

- (d) Business Associate agrees to report to Covered Entity any use or disclosure of Protected Health Information not provided for by this BA Agreement of which it becomes aware, including a Breach of Unsecured Protected Health Information or a Security Incident.
- (e) Business Associate agrees to report to Covered Entity any Security Incident without unreasonable delay, and in no event later than ten (10) calendar days, after becoming aware that such Security Incident affects Covered Entity's information, except that, for purposes of this Security Incident reporting requirement, the term "Security Incident" shall not include inconsequential incidents that occur on a daily basis, such as scans, "pings" or other unsuccessful attempts to penetrate computer networks or servers containing electronic PHI maintained by Business Associate.
- (f) Business Associate agrees to report to Covered Entity any Breach of Unsecured Protected Health Information without unreasonable delay and in no case later than thirty (30) calendar days after becoming aware that such Breach affects Covered Entity's Protected Health Information. Such notice shall include the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate, to have been, accessed, acquired, or disclosed in connection with such Breach. In addition, Business Associate shall provide any information reasonably requested by Covered Entity for purposes of making the notifications required by 45 CFR 164.404(c) as soon as such information is available to Business Associate. Business Associate's notification of a Breach under this section shall comply in all respects with each applicable provision of 45 CFR Part 164, Subpart D and related guidance issued by the Secretary from time to time. In addition, if delegated in writing by Covered Entity, Business Associate shall provide such notices to the media and to Individuals affected by the Breach as required by 45 CFR 164.404 and 45 CFR 164.406. Business Associate shall provide Covered Entity with advance copies of such notices prior to distribution. In all cases, Covered Entity shall be responsible for submitting reports of Breaches directly to the Secretary.
- (g) Business Associate shall require any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate to agree in writing to restrictions and conditions that are no less protective than those that apply through this BA Agreement to Business Associate with respect to such information, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable.
- (h) Business Associate shall provide access directly to an Individual, at the request of Covered Entity or an Individual and in a prompt and reasonable manner, including in the electronic form or format requested by the Individual, to Protected Health Information in a Designated Record Set, subject to and consistent with the timing and other provisions of 45 CFR 164.524.
- (i) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set at the request of Covered Entity or an Individual, subject to and consistent with the timing and other provisions of 45 CFR 164.526.
- (j) Business Associate agrees to make (i) internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, and (ii) policies, procedures, and documentation relating to the safeguarding of Electronic Protected Health Information available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's or Business Associate's compliance with the Privacy and Security Rules.
- (k) Business Associate agrees to document 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, subject to and consistent with 45 CFR 164.528.
- (l) Business Associate agrees to provide to an Individual, at the request of Covered Entity or an Individual, an accounting of disclosures of Protected Health Information subject to and consistent with the timing and other provisions of 45 CFR 164.528.
- (m) With respect to Electronic Protected Health Information, Business Associate shall implement and comply with the administrative safeguards set forth at 45 CFR 164.308, the physical safeguards set forth at 45 CFR 310, the technical safeguards set forth at 45 CFR 164.312, and the policies and procedures set forth at 45 CFR 164.316 to 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 Covered Entity. Business Associate acknowledges that (i) the foregoing safeguards, policies and procedures requirements shall apply to Business Associate in the same manner that such requirements apply to Covered Entity, and (ii) Business Associate shall be subject to HIPAA enforcement provisions, as amended from time to time, for failure to comply with the Security Rule safeguards, policies and procedures requirements and any guidance issued by the Secretary from time to time with respect to such requirements.

(n) If Business Associate conducts any Standard Transactions on behalf of Covered Entity, Business Associate shall comply with, and require any Subcontractor to comply with, the applicable requirements of 45 CFR Parts 160-162.

(o) Business Associate acknowledges that it shall be subject to the HIPAA enforcement provisions, as amended from time to time, for

- (i) impermissible uses and disclosures,
- (ii) failure to provide breach notification to Covered Entity,
- (iii) failure to provide access to a copy of Electronic Protected Health Information to either Covered Entity or the Individual, or the Individual's designee,
- (iv) failure to disclose Protected Health Information where required by the Secretary to investigate or determine Covered Entity's compliance with HIPAA, and
- (v) failure to provide the accounting of disclosures required in this BA Agreement.

(p) To the extent under the Services Agreement or this BA Agreement Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).

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

#### 3.1 General Use and Disclosure

Except as otherwise provided in this BA Agreement, Business Associate may use or disclose Protected Health Information to perform its obligations under the Services Agreement, provided that such use or disclosure would not violate the Privacy and Security Rules if done by Covered Entity.

#### 3.2 Specific Use and Disclosure Provisions

- (a) Except as otherwise provided in this BA Agreement, Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- (b) Except as otherwise provided in this BA Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached in accordance with the Breach and Security Incident notifications requirements of this BA Agreement.
- (c) Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an Individual without Covered Entity's prior written approval and notice from Covered Entity that it has obtained from the Individual, in accordance with 45 CFR 164.508, a valid authorization that includes a specification of whether the Protected Health Information can be further exchanged for remuneration by Business Associate.
- (d) Business Associate may use or disclose Protected Health Information to communicate about a product or service, provided that such communication is made in a manner that does not constitute marketing as defined in 45 CFR 164.501 or otherwise constitute a use or disclosure that Covered Entity is prohibited from performing itself.
- (e) Business Associate may use Protected Health Information to perform Data Aggregation services.
- (f) Business Associate may use Protected Health Information to report violations of law to appropriate

- Federal and State authorities, consistent with 45 CFR 164.502(j).
- (g) The provisions of this BA Agreement notwithstanding, Business Associate is permitted to de-identify Protected Health Information, provided that it does so in accordance with HIPAA de-identification rules. De-identified information does not constitute Protected Health Information, and may be used and disclosed by Business Associate for its own purposes, including, without limitation, for purposes of developing comparative databases, performing statistical analysis and research, and improving the quality of Business Associate's products and services.

#### 4. Obligations of Covered Entity

##### 4.1 Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

- (a) Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity's notice of privacy practices agreed to in accordance with 45 CFR § 164.520(b)(2), to the extent that such limitation(s) may affect Business Associate's use or disclosure of Protected Health Information.
- (b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes affect Business Associate's uses or disclosures of Protected Health Information.
- (c) Covered Entity agrees that it will not impose special limits or restrictions on the uses and disclosures of its Protected Health Information that may impact in any manner the use and disclosure of Protected Health Information by Business Associate under the Services Agreement and this BA Agreement, including, but not limited to, restrictions on the use and/or disclosure of Protected Health Information as provided for in 45 C.F.R. 164.522(a), unless such restrictions are required by 45 CFR 164.522(a). The foregoing notwithstanding, Business Associate agrees to accommodate reasonable requests for alternative means of communications pursuant to 45 C.F.R. 164.522(b).

##### 4.2 Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy and Security Rules if done by Covered Entity except that Business Associate may use Protected Health Information in its possession (i) for Business Associate's proper management and administrative services, or (ii) to provide Data Aggregation services to the Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).

#### 5. Term and Termination

- (a) Term. The provisions of this BA Agreement shall take effect on the Effective Date, and shall terminate upon expiration or termination of the Services Agreement, except as otherwise provided herein.
- (b) Termination for Cause. Without limiting the termination rights of the parties pursuant to the Services Agreement and upon either party's knowledge of a material breach by the other party, the non-breaching party shall either:

- i. Provide an opportunity for the breaching party to cure the breach or end the violation, or terminate the Services Agreement, if the breaching party does not cure the breach or end the violation within the time specified by the non-breaching party, or
- ii. Immediately terminate the Services

Agreement, if cure of such breach is not possible.

(c) Effect of Termination.

The parties mutually agree that it is essential for Protected Health Information to be maintained after the expiration of the Services Agreement for regulatory and other business reasons. Notwithstanding the expiration of the Services Agreement, Business Associate shall extend the protections of this BA Agreement to such Protected Health Information, and limit further use or disclosure of the Protected Health Information to those purposes that make the return or destruction of the Protected Health Information infeasible.

6. Miscellaneous

(a) Regulatory References. A reference in this BA Agreement to a section in the Privacy and Security Rules means the section as in effect or as amended, and for which compliance is required.

(b) Amendment. The Parties agree to take such action to amend this BA Agreement from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of HIPAA.

(c) Survival. The respective rights and obligations of Business Associate under Section 5(c) of this BA Agreement shall survive the termination of this BA Agreement.

(d) Interpretation. Any ambiguity in this BA Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy and Security Rules. In the event of any inconsistency between this BA Agreement and the Services Agreement, including any other appendices, schedules, exhibits and attachments, the terms and conditions of this BA Agreement shall control.

(e) No third party beneficiary. Nothing express or implied in this BA Agreement or in the Services 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.

(f) Governing Law. This BA Agreement shall be governed by and construed in accordance with the governing law provisions of the Services Agreement, subject to applicable federal law.

(g) Countersignature. This BA Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. In addition, this BA Agreement may contain more than one counterpart of the signature page and this BA Agreement may be executed by the affixing of the signatures of Business Associate and Covered Entity, or County of Hidalgo on behalf of Covered Entity, to one of such counterpart signature pages. All of those counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

(h) Notices: Any notices or communications to be given under this Agreement shall be made to the address and/or fax numbers given below:

To : Hidalgo County  
Commissioner's Court  
Attention: Sergio Cruz

Phone: 956 292-7000

Fax: 956-292-7035

[Sergio\\_cruz@co.hidalgo.tx.us](mailto:Sergio_cruz@co.hidalgo.tx.us)

To: Business Associate  
Aetna

HIPAA Member Rights Team

151 Farmington Ave RT 65

Hartford, CT 06156

FAX 859-280-1272

[NEXT PAGE IS THE SIGNATURE PAGE]

AETNA LIFE INSURANCE COMPANY

\_\_\_\_\_  
Authorized Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

HIDALGO COUNTY

\_\_\_\_\_  
Authorized Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date