

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (the “Agreement”) is entered into this ____ day of _____, 201____, by and between _____ (hereinafter “Business Associate”) and SHA, L.L.C. d/b/a FirstCare Health Plans (hereinafter “Covered Entity”). It shall become effective on the date of execution (“Effective Date”).

In consideration for Business Associate access to and/or use of Protected Health Information for those purposes allowed by the Health Insurance Portability and Accountability Act and Privacy Standards (“HIPAA”), the Health Information Technology for Economic and Clinical Health (or the “HITECH”) Act, the Genetic Information and Nondiscrimination Act of 2008 (“GINA”), the Omnibus Rule and the Texas Medical Records Privacy Act of the Texas Health and Safety Code, consistent with the terms of the Agreement and other good and valuable consideration, Business Associate and Covered Entity agree as follows:

1. **Definitions.** As used in the HIPAA Agreement:

1.1. “Breach” shall mean, as defined in 45 C.F.R. § 164.402, the acquisition, access, use or disclosure of Unsecured Protected Health Information in a manner not permitted by the HIPAA Rules that compromises the security or privacy of that Protected Health Information.

1.2. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean _____.

1.3. “Business Associate Subcontractor” shall mean, as defined in 45 C.F.R. § 160.103, any entity (including an agent) that creates, receives, maintains or transmits Protected Health Information on behalf of Business Associate. Where Business Associate is stated herein, it will apply to the Business Associate Subcontractor, if applicable.

1.4. “Covered entity” shall have the same meaning as the term “covered entity” in Section 181.001(b), Texas Health and Safety Code, and means any person who:

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site;

(B) comes into possession of protected health information;

(C) obtains or stores protected health information under this chapter; or

(D) is an employee, agent, or contractor of a person described by Paragraph (A), (B), or (C) insofar as the employee, agent, or contractor creates, receives, obtains, maintains, uses, or transmits protected health information.

1.5. “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.

1.6. "Disclose" means to release, transfer, provide access to, or otherwise divulge information outside the entity holding the information.

1.7. “Electronic Health Records” shall have the same meaning as the term “electronic health records” is defined in Section 181.102(a), Texas Health and Safety Code, and means:

(a) Except as provided by Subsection (b), if a health care provider is using an electronic health records system that is capable of fulfilling the request, the health care provider, not later than the 15th business day after the date the health care provider receives a written request from a person for the person's electronic health record, shall provide the requested record to the person in electronic form unless the person agrees to accept the record in another form.

(b) A health care provider is not required to provide access to a person's protected health information that is excepted from access, or to which access may be denied, under 45 C.F.R. Section 164.524.

1.8. “Electronic Protected Health Information” shall have the same meaning as the term “electronic protected health information” in 45 C.F.R. § 160.103.

1.9. “HIPAA” means the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act, Public Law 104-191, and any amendments thereto.

1.10. “HIPAA Rules” mean the Privacy Rule, Security Standards, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

1.11. “HITECH Act” means Subtitle D of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (42 U.S.C. §§ 17921 – 54).

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

1.13. “Limited Data Set” shall mean, as defined in 45 C.F.R. § 164.514(e), Protected Health Information that excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individual:

(i) Names;

(ii) Postal address information, other than town or city, State, and zip code;

(iii) Telephone numbers;

- (iv) Fax numbers;
- (v) Electronic mail addresses;
- (vi) Social security numbers;
- (vii) Medical record numbers;
- (viii) Health plan beneficiary numbers;
- (ix) Account numbers;
- (x) Certificate/license numbers;
- (xi) Vehicle identifiers and serial numbers, including license plate numbers;
- (xii) Device identifiers and serial numbers;
- (xiii) Web Universal Resource Locators (URLs);
- (xiv) Internet Protocol (IP) address numbers;
- (xv) Biometric identifiers, including finger and voice prints; and
- (xvi) Full face photographic images and any comparable images.

1.14. “Omnibus Rule” means the final rule comprised of the following four final rules: 1) Final modifications to the HIPAA Privacy, Security, and Enforcement Rules mandated by HITECH Act, and certain other modifications to improve the HIPAA Rules; 2) Final rule adopting changes to the HIPAA Enforcement Rule to incorporate the increased and tiered civil money penalty structure provided by the HITECH Act; 3) Final rule on Breach Notification for Unsecured Protected Health Information under the HITECH Act; and Final rule modifying the HIPAA Privacy Rule as required by the Genetic Information Nondiscrimination Act, as issued on January 25, 2013 and effective, March 26, 2013 (75 Fed. Reg. 5566 (Jan. 25, 2013)).

1.15. “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, as they exist now or as they may be amended.

1.16. “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. Unless otherwise stated in the Agreement, any provision, restriction, or obligation in the HIPAA Agreement related to the use of Protected Health Information shall apply equally to Electronic Protected Health Information.

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

1.18. “Secretary” shall have the same meaning as the term “secretary” in 45 C.F.R. § 160.103.

1.19. “Security Standards” means the Security Standards at 45 C.F.R. Parts 160, 162, and 164, as they exist now or as they may be amended.

1.20. “Texas Medical Records Privacy Act” of the Texas Health and Safety Code means Texas House Bill 300 that amends Chapter 181 of the Texas Health and Safety Code, effective September 1, 2012.

1.21. Terms used, but now otherwise defined, in the Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 160.103 and 164.501. If any citation referenced in the Agreement is changed due to an amendment of the applicable statute or regulation, the citation herein shall be deemed to be automatically amended to reflect the proper citation.

2. Obligations and Activities of Business Associate.

2.1. Business Associate agrees that it shall not, and that its directors, officers, employees, contractors and agents shall not, use or further disclose Protected Health Information other than as permitted or required by the HIPAA Agreement or as Required by Law.

2.2. Business Associate shall develop, implement, maintain and use appropriate safeguards to prevent the use or disclosure of Protected Health Information other than as provided for by the Agreement.

2.3. Business Associate shall develop, implement, maintain and use appropriate administrative, technical and physical safeguards in compliance with the HITECH Act and applicable provisions of the Security Standards (including 45 C.F.R. §§ 164.308, 310, 312, 316 and 164.530(c)) and any other applicable implementing regulations issued by the U.S. Department of Health and Human Services, to reasonably and appropriately protect the integrity, confidentiality, and availability of and prevent non-permitted use or disclosure of Electronic Protected Health Information. Business Associate will develop and implement written policies and procedures for these safeguards and will keep them current.

2.4. Business Associate shall, if it uses an Electronic Health Record system, provide an Electronic Health Record that is capable of fulfilling the request not later than the fifteenth (15th) business day after receiving a written request from a person for the person's Electronic Health Record and shall provide the requested record to the person in electronic form unless the person agrees to accept the record in another form.

2.5. Business Associate shall, at the request of Covered Entity, allow individuals a right of access to inspect and obtain a copy of Protected Health Information about the individual in a designated record set, for as long as the Protected Health Information is maintained in the designated record set, subject to 45 C.F.R. § 164.524, except for:

- (i) Psychotherapy notes;
- (ii) Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; and
- (iii) Protected health information maintained by a Covered Entity that is:

(A) Subject to the Clinical Laboratory Improvements Amendments of 1988, 42 U.S.C. § 263a, to the extent the provision of access to the individual would be prohibited by law; or

(B) Exempt from the Clinical Laboratory Improvements Amendments of 1988, pursuant to 42 C.F.R. § 493.3(a)(2).

2.5 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 the HIPAA Agreement.

Notification of Privacy or Security Breach.

2.5.1. Breach Notification. Following discovery, Business Associate shall report immediately any “breach” of “unsecured Protected Health Information,” as these terms are defined in 45 C.F.R. §§ 164.402. Business Associate shall make such a report immediately, but not later than the first twenty-four (24) hours of its discovery, in accordance with the Texas Medical Records Privacy Act. Business Associate shall cooperate with Covered Entity in investigating the breach and in meeting the Covered Entity’s obligations under the breach notification provisions of HIPAA (45 C.F.R. Part 164 Subpart D).

2.5.2. Privacy Breaches. With respect to any incident not subject to reporting under § 2.5.1 of the Agreement, Business Associate shall promptly report to Covered Entity any use or disclosure of Protected Health Information of which it become aware that is not permitted or required by the Agreement.

2.5.3. Security Incidents. With respect to any incident not subject to reporting under §§ 2.5.1 or §§ 2.5.2 of the Agreement, Business Associate shall report to Covered Entity any successful (a) unauthorized access, use, disclosure, modification, or destruction of Covered Entity’s Electronic Protected Health Information or (b) unauthorized interference with system operations in Business Associate information system, of which Business Associate becomes aware. Business Associate shall, upon Covered Entity’s written request, provide Covered Entity with Business Associate’s periodic report of attempted, but unsuccessful (a) unauthorized access, use, disclosure, modification, or destruction of Covered Entity’s Electronic Protected Health Information or (b) unauthorized interference with system operations in Business Associate information systems, of which Business Associate becomes aware.

2.6. Business Associate agrees, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information agrees in writing to the same restrictions and conditions that apply through the Agreement to Business Associate with respect to Protected Health Information.

2.7. Business Associate agrees to make its internal practices, books and records relating to the use and disclosure of Protected Health Information available to Covered Entity, or at the request of Covered Entity to the Secretary, in a time and manner designated by Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity’s and Business Associate compliance with the Privacy Rule or HIPAA Rules.

2.8. 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 in accordance with 45 C.F.R. § 164.528. Business Associate agrees to implement an appropriate record keeping process that will track, at a minimum, the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the Protected Health Information, and if known, the address of such entity or person; (iii) a brief description of the Protected Health Information disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure.

- 2.9. Business Associate agrees to provide to Covered Entity or an Individual, in a time and manner designated by Covered Entity, information collected in accordance with Section 2.8 of the agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information during the six (6) years prior to the date on which the accounting was requested, in accordance with 45 C.F.R. § 164.528.
- 2.10. In the event Business Associate receives a subpoena, court or administrative order or administrative order or other discovery request or mandate for release of Protected Health Information, Business Associate shall notify Covered Entity of the request as soon as reasonably practicable, but in any event within five (5) business days of receipt of such request.

3. Permitted Uses and Disclosures by Business Associate.

3.1. General Use. Except as otherwise limited in the Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity, provided that such use or disclosure would not violate the Privacy Rule, HIPAA Rules, the HITECH Act or the Texas Medical Records Privacy Act if done by Covered Entity.

3.2 Flow-Down of Obligations to Business Associate Subcontractors. Business Associate agrees that as required by the HIPAA Rules, Business Associate will enter into a written agreement with all Business Associate Subcontractors that: (i) requires them to comply with the Privacy and Security Rule provisions of this Agreement in the same manner as required of Business Associate, and (ii) notifies such Business Associate Subcontractors that they will incur liability under the HIPAA Requirements for non-compliance with such provisions. Accordingly, Business Associate shall ensure that all Business Associate Subcontractors agree in writing to the same privacy and security restrictions, conditions and requirements that apply to Business Associate with respect to PHI.

3.3. Specific Use and Disclosure Provisions.

3.3.1. Except as otherwise limited in the 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.

3.3.2. Except as otherwise limited in the 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 disclose 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.

3.3.3. Except as otherwise limited in the 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).

3.3.4. 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).

3.2.5 Notwithstanding the foregoing, Business Associate shall not (a) use or disclose Protected Health Information for fundraising or marketing purposes except as permitted by the Privacy Rule, (b) disclose Protected Health Information to a health plan for payment or health care operations purposes if Business Associate is made aware of a patient's request for this special restriction and patient has paid out of pocket in full for the health care item or service to which the Protected Health Information solely relates, or (c) directly or indirectly receive remuneration in exchange for Protected Health Information, except as permitted by the HITECH Act.

4. Obligations of Covered Entity.

4.1. Covered Entity shall notify Business Associate of any limitations(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 use or disclosure of Protected Health Information.

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

4.3. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate use or disclosure of Protected Health Information.

4.4. 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 Rule or HIPAA Rules if done by Covered Entity, except as specifically allowed by section 3.2 of the Agreement.

5. Term and Termination.

- 5.1. Term. The Term of the Agreement shall be effective as of the Effective Date, and shall terminate when 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, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- 5.2. Covered Entity's Termination for Breach. Upon Covered Entity's knowledge of a material breach of the terms of the Agreement by Business Associate, Covered Entity shall:
- 5.2.1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - 5.2.2. Immediately terminate the Agreement if Business Associate has breached a material term of the Agreement and cure is not possible; or
 - 5.2.3. If neither termination nor cure is feasible, report the violation to the Secretary.
- 5.3. Business Associate Termination for Breach. Upon Business Associate's knowledge of a material breach of the terms of the Agreement by Covered Entity, Business Associate shall:
- 5.3.1. Provide an opportunity for Covered Entity to cure the breach or end the violation and terminate the Agreement if Covered Entity does not cure the breach or end the violation within the time specified by Business Associate;
 - 5.3.2. Immediately terminate the Agreement if Covered Entity has breached a material term of the Agreement and cure is not possible; or
 - 5.3.3. If neither termination nor cure is feasible, report the violation to the Secretary.
- 5.4. Effect of Termination
- 5.4.1. Except as provided in paragraph 5.4.2 of this section, upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information. 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.
 - 5.4.2. In the event that return or destruction of the Protected Health Information is infeasible, Business Associate shall extend the protections of the 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 feasible, for so long as Business Associate maintains such Protected Health Information.

6. Miscellaneous.

- 6.1. Amendment. No provision of the Agreement may be modified except by a written document signed by a duly authorized representative of the parties. The parties agree to amend the Agreement, as appropriate, to conform to any new or revised legislation, rule and regulations to which Covered Entity is subject now or in the future including, without limitation, the Privacy Rule, Security Standards or Transactions Standards (collectively “Laws”). If within ninety (90) calendar days of either party first providing written notice to the other of the need to amend the Agreement to comply with Laws, the parties, acting in good faith, are i) unable to mutually agree upon and make amendments or alterations to the Agreement to meet the requirements in question, or ii) alternatively, the parties determine in good faith that amendments or alterations to the requirements are not feasible, then either party may terminate the Agreement upon thirty (30) calendar days written notice.
- 6.2. Assignment. No party may assign or transfer any or all of its rights and/or obligations under the Agreement or any part of it, nor any benefit or interest in or under it, to any third party without the prior written consent of the other party, which shall not be unreasonably withheld.
- 6.3. Survival. The respective rights and obligations of Business Associate under Section 5.4.2 of the Agreement shall survive the termination of the Agreement.
- 6.4. Interpretation. Any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule, HIPAA Rules or Security Standards.
- 6.5. Third Party Rights. The terms of the Agreement are not intended, nor should they be construed, to grant any rights to any parties other than Business Associate and Covered Entity.
- 6.6. Entire Agreement. The Agreement constitutes the entire agreement of the parties with respect to the parties’ compliance with federal and/or state health information confidentiality laws and regulations, as well as the parties’ obligations under the Business Associate provisions of 45 C.F.R. parts 160 and 164. The Agreement supersedes all prior or contemporaneous written or oral memoranda, arrangements, contracts, or understandings between the parties hereto relating to the same. The Agreement supersedes any prior or contemporaneous written or oral memoranda, arrangements, contracts or understandings between the parties hereto relating to the confidentiality of other Covered Entity proprietary and/or confidential information.
- 6.7. Minimum Necessary. Covered Entity and Business Associate shall adhere to all required standards with respect the “minimum necessary” requirements for uses, disclosures and requests for protected health information under the Privacy Rule or HIPAA Rules. Business Associate’s use, disclosure, or request of PHI shall utilize a Limited Data Set if practicable. Otherwise, in performing the functions and activities

as specified in this Agreement, Business Associate agrees to use, disclose, or request only the minimum necessary PHI to accomplish the intended purpose of the use, disclosure, or request.

6.8. Notice. All notices required under the Agreement shall be in writing and shall be deemed to have been given on the next day by fax or other electronic means or upon personal delivery, or in ten (10) calendar days upon delivery in the mail, first class, with postage prepaid. Notices shall be sent to the addressees indicated below unless written notification of change of address shall have been given.

In the case of Covered Entity:

In the case of Business Associate:

SHA, L.L.C. d/b/a FirstCare Health Plans
12940 N Highway 183
Austin, TX 78750
Attn: CFO

Attn: _____

Fax: (512) 257-6017

Fax: (_ _ _) _ _ _ - _ _ _ _

6.9. Owner of Protected Health Information. Under no circumstances shall Business Associate be deemed in any respect to be the owner of any Protected Health Information used or disclosed by or to Business Associate pursuant to the Terms of the Agreement.

IN WITNESS WHEREOF, the parties have executed the Agreement the day and year first written above.

ACCEPTED AND AGREED:

ACCEPTED AND AGREED:

SHA, L.L.C. d/b/a FIRSTCARE

Signature

Signature

Printed

Printed

Title

Title

Date

Date