

ALLIANT HEALTH PLANS, INC.
Business Associate Agreement

This Business Associate Agreement (this “Agreement”) is entered into this ____ day of _____, 20__ (the “Effective Date”), by and between _____ (“Business Associate”) and **Health One Alliance, LLC on behalf of itself, affiliates, and subsidiaries including Alliant Health Plans, Inc.** (“Covered Entity”). Business Associate and Covered Entity may be referred to herein as a “Party” or the “Parties.”

RECITALS:

Covered Entity provides services that pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) requires Covered Entity to restrict the uses and disclosures of Protected Health Information, as defined by HIPAA, in accordance with the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E as amended from time to time (the “Privacy Rule”), and Subparts A and C as amended from time to time (the “Security Rule”) under HIPAA, which was amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), as Title XIII Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub.L. 111-5). Pursuant to the Management Services Agreement between Covered Entity and Business Associate (the “Service Agreement”), Business Associate is receiving access to host, use or disclose Protected Health Information for the purposes of providing services on behalf of Covered Entity. Thus, pursuant to the state and federal regulations and to the extent Business Associate receives or creates Protected Health Information, Business Associate is required to comply with the state privacy and security laws that are not preempted by HIPAA, HIPAA Privacy and Security Rules, the HIPAA requirements as amended by the HITECH Act and the HITECH Act and its accompanying and implementing regulations.

NOW, THEREFORE, the Parties, in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, do hereby agree as follows:

1. **Definitions.** Unless otherwise provided in this Agreement, capitalized terms shall have the same meanings as set forth in the Standards for Privacy or Security of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
 - a. “**Breach**” shall have the same meaning as the term “breach” given in 45 C.F.R. § 164.402, as amended by HITECH Act and shall include the unauthorized acquisition, access, use or disclosure of Protected Health Information that compromises the security or privacy of such information.
 - b. “**Business Days**” shall mean Monday through Friday and excludes all weekends and holiday days that are approved or sanctioned by the United States Government.

- c. **“Designated Record Set”** shall mean a group of records maintained by or for a covered entity that is (i) the medical records and billing records about Individuals maintained by or for covered entity, (ii) enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a Health Plan, and (iii) used, in whole or in part, by or for covered entity to make decisions about Individuals. For the purposes of this paragraph, the term “Record” means any items, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for covered entity.
- d. **“Electronic Protected Health Information”** or “Electronic PHI” shall have the meaning in 45 C.F.R. 160.103.
- e. **“HHS”** shall mean the United States Department of Health and Human Services.
- f. **“Individually Identifiable Health Information”** shall mean information that is a subset of health information, including demographic information, that is collected from an Individual and (1) is created or received by a covered entity or an employer; (2) relates to the past, present or future physical or mental health or condition of an Individual, the provision of healthcare to an Individual, or the past, present, or future payment for the provision of healthcare to an Individual; and (3) identifies the Individual, or there is a reasonable basis to believe the information can be used to identify the Individual.
- g. **“Individual(s)”** 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).
- h. **“Information System”** means an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communications and people.
- i. **“Privacy Rules”** shall mean the Standards for Privacy of Individually Identifiable Health Information found at 45 C.F.R. §§ 160 and 164, subparts A and E in effect or as amended, and with which compliance is required.
- j. **“Protected Health Information (“PHI”)** shall have the same meaning as the term “protected health information” in 45 C.F.R. 160.103.
- k. **“Required by Law”** shall have the same meaning as the term “required by law” in 45 C.F.R. 164.103 and 45 C.F.R. 164.512(a).
- l. **“Secretary”** shall mean the Secretary of HHS or his/her designee.
- m. **“Security Incident”** shall have the meaning as the term “Security Incident” in 45 C.F.R. 164.304, which means the attempted or successful unauthorized access, use,

disclosure, modification or destruction of information or interference with system operations in an Information System.

- n. “**Security Rule**” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A , C and E, in effect or as amended, and with which compliance is required.
- o. “**Unsecured PHI**” shall mean Protected Health Information that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined by the HITECH Act.

2. **Obligations and Activities of Business Associate.**

- a. Permitted Uses. Business Associate agrees to use or disclose PHI in accordance with the terms of this Agreement or as Required by Law.
- b. Appropriate Safeguards. Business Associate agrees to implement appropriate and reasonable administrative, technical and physical safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- c. Mitigation. 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.
- d. Reporting.
 - 1. Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement or any Security Incident of which it becomes aware. Upon discovery of a breach of the security of PHI or a Security Incident, Business Associate shall notify Covered Entity within two (2) Business Days. Notice should include the identification of each individual whose PHI has been or is reasonably believed to have been breached, the type of PHI that was believed to be disclosed, the mitigation actions taken by the Business Associate to prevent future breaches and any other information necessary for the Covered Entity to comply with the notification requirements promulgated by HIPAA and HITECH.
 - 2. Business Associate agrees to notify Covered Entity of any Breach of Unsecured Protected Health Information within two (2) Business Days of the date Business Associate learns of the Breach. Business Associate shall provide such information to Covered Entity as required by the Breach Notification Standards set forth in the HITECH Act. Business Associate shall cooperate and assist Covered Entity in making the notification to third parties required by law in the event of a Breach due to Business Associate and shall reimburse Covered Entity for any and all reasonable costs incurred

by Covered Entity to provide the required notices, as well as any reasonable costs associated with the Breach, including, but not limited to, credit monitoring subscriptions for the affected individuals.

- e. Agents and subcontractors. Business Associate agrees to require subcontractors of the Business Associate, to whom it provides PHI received from, or created on behalf of, Covered Entity, to comply with the restrictions and conditions that apply through this Agreement to Business Associate with respect to such information, including the safeguards contained in this Agreement. Pursuant to and in accordance with the requirements of the effective HIPAA regulations, Business Associate shall be responsible for the acts and omissions of its subcontractors.
- f. Access to Protected Health Information. Business Associate agrees to provide access to PHI maintained in a Designated Record Set, within ten (10) Business Days upon receipt of the request of Covered Entity or in a reasonable time to meet the requirements under 45 C.F.R. 164.524.
- g. Amendment of Protected Health Information. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526, at the request of Covered Entity or an Individual, within the time requirements of 45 CFR §164.526.
- h. Governmental Access to Records. Business Associate agrees to make its internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received for Covered Entity, available to the Secretary, for the purposes of the Secretary determining Covered Entity's and Business Associate's compliance with the Privacy Rule.
- i. Audits, Inspection, and Enforcement. Within ten (10) Business Days of Covered Entity's written request, Business Associate shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, and policies/procedures relating to Business Associate's Use and Disclosure of Covered Entity's Protected Information for the purpose of determining whether Business Associate is in compliance with this Agreement. The fact that Covered Entity inspects, or fails to inspect, does not relieve Business Associate of its responsibility to comply with this Agreement, nor does Covered Entity's failure to detect an unsatisfactory practice constitute acceptance of such practice or a waiver of Covered Entity's enforcement of rights under this Agreement.
- j. Accounting of Disclosures. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity, to respond to an accounting of disclosures of PHI under 45 CFR §164.528, the HITECH Act guidance and the effective regulations regarding accounting for disclosures.

- k. Services on Behalf of Covered Entity. Business Associate agrees that to the extent the Business Associate performs one or more of the Covered Entity's obligations under the Privacy Rule; Business Associate shall comply with the HIPAA Privacy Rule in the same manner that such Rule would apply to the Covered Entity in the performance of such obligation.

- l. Security Standards. Business Associate shall implement administrative, physical and technical safeguards for Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity, including without limitation, compliance with each of the Standards and Implementation Specifications of 45 C.F.R. §164.308 (Administrative Safeguards), 45 C.F.R. §164.310 (Physical Safeguards), 45 C.F.R. §164.312 (Technical Safeguards) and 45 C.F.R. §164.316 (Policies and Procedures and Documentation Requirements).

- m. Agent Protection of Electronic PHI. Business Associate shall ensure that its subcontractors to whom it provides Electronic PHI, agrees to implement reasonable and appropriate administrative, physical and technical safeguards to protect that Electronic PHI, including compliance with each of the Standards and Implementation Specifications of 45 C.F.R. §164.308 (Administrative Safeguards), 45 C.F.R. §164.310 (Physical Safeguards), 45 C.F.R. §164.312 (Technical Safeguards) and 45 C.F.R. §164.316 (Policies and Procedures and Documentation Requirements).

- n. Minimum Necessary. Business Associate acknowledges that it shall limit the use, disclosure or request of PHI to perform or fulfill a specific function required or permitted hereunder to the Minimum Necessary information, to accomplish the purpose of such use, disclosure or request as set forth in 45 C.F.R. §164.502(b).

- o. Standard Transactions. Business Associate does not conduct any Standard Transactions, as defined in 45 C.F.R. §162.103, on behalf of Covered Entity, Business Associate shall comply with the applicable requirements of 45 C.F.R. Part 162.

- p. Additional Restrictions. Notwithstanding any other provision in this Agreement, Business Associate shall comply with the effective provisions of HIPAA and its implementing regulations that apply to Business Associates, including the following:
 - 1. requests for restrictions on use or disclosure to health plans for payment or health care purposes when the provider has been paid by the individual or person other than the health plan on behalf of the individual, consistent with 45 C.F.R. §522(a)(1)(iv);
 - 2. the prohibition on sale of Protected Health Information without authorization, unless an exception under 45 C.F.R. §164.508(a)(4) applies;

3. the prohibition on receiving remuneration for certain communications that fall within the exceptions to the definition of marketing under 45 C.F.R. §164.501 unless permitted by this Agreement and 45 C.F.R. §164.508.
- q. Encryption. Business Associate shall transmit, store and host Covered Entity's PHI in an encrypted form that complies with the guidance provided by DHHS. Business Associate shall implement the security recommendations provided by DHHS from time to time related to recommendations to secure PHI. At all times Covered Entity's PHI in the possession of Business Associate or its subcontractors shall be secure and shall not be "Unsecure PHI" as such term is defined by DHHS.

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

- a. **Permissible Use**. Business Associate may only use or disclose PHI as necessary to perform the services set forth in the underlying arrangement between the parties. Business Associate may also use or disclose protected health information as Required By Law.
- b. **Management and Administration**. 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, provided the disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as Required by Law or for the purposes 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.
- c. **Permitted Uses via Contract**. Business Associate shall not de-identify the PHI and use or disclose it unless permitted by the underlying contract with Covered Entity in which case the de-identification shall comply with 45 CFR 164.514(a)-(c). Business Associate may provide data aggregation services relating to the healthcare operations of the Covered Entity.
- d. **Minimum Necessary Use and Disclosure Requirement**. Business Associate shall only request, use and disclose the minimum amount of PHI necessary to reasonably accomplish the purpose of the request in accordance with 45 C.F.R. 164.502(b). In addition, Business Associate shall restrict access to PHI to those employees of Business Associate or other workforce members under the control of Business Associate who are actively and directly participating in providing goods and/or services under the arrangement between the parties and who need to know such information in order to fulfill such responsibilities.

4. **Obligations of Covered Entity**

- a. Revocation of Consent. Covered Entity shall notify Business Associate in writing of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- b. Restrictions on Use of Protected Health Information. Covered Entity shall notify Business Associate in writing of any restriction to the use or disclosure of PHI 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's use or disclosure of PHI.
- c. Notice of Privacy Rights. Covered Entity shall provide Business Associate with notice of any restrictions on the use or disclosure of PHI provided in the Covered Entity Notice of Privacy Rights.

5. **Term and Termination**

- a. Term. The Term of this Agreement shall be effective as of the Effective Date, and shall terminate 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 infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- b. Termination For Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall:
 - 1. Provide an opportunity for Business Associate to cure the breach within thirty (30) days; or
 - 2. Immediately terminate the Agreement with prior written notice if Business Associate has breached a material term of the Agreement and cure is not possible; or
 - 3. If cure or immediate termination is not possible, Covered Entity shall notify Business Associate of its intent to report the material breach to the Secretary of HHS.
- c. Effect of Termination. Except as provided below, upon termination or expiration 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. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

6. **Entire Agreement.** This Agreement supersedes any and all other agreements, whether oral or in writing, between the Parties with respect to PHI, and this Agreement contains all of the covenants and agreements between the Parties with respect to PHI in any manner whatsoever. Each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any Party, or anyone acting on behalf of any Party, that are not embodied in this Agreement relating to PHI, and that no other agreement, statement, or promise not contained in this Agreement with respect to PHI shall be valid or binding.
7. **Modification.** No change or modification of this Agreement shall be valid or binding unless the same is in writing and signed by each of the Parties hereto.
8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.
9. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement or in the Service 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.
10. **Amendment.** This Agreement shall automatically be deemed amended and any conflicting terms shall be superseded by new regulations in order to support compliance with the HIPAA Privacy and Security Rule as amended through the regulatory process. Business Associate and Covered Entity agree to comply with the applicable laws and regulations. Any other amendments or modifications shall only be amended through a written amendment by both parties.
11. **Indemnification.** Business Associate agrees to defend and hold Covered Entity harmless from any claims, damages fines, penalties, expenses and costs (including reasonable attorney's fees) arising from the party, its officers, directors, employees and contractors' negligence or willful neglect that resulted in a breach of this Agreement or a breach of the HIPAA Privacy and Security Rule. Business Associate agrees to cooperate with the Covered Entity to share information and cooperate in the event of a claim without violating attorney-client privilege protections to protect the interest of the Covered Entity.
12. **Insurance.** Business Associate shall obtain and maintain during the term of this Addendum liability insurance covering claims based on a violation of the HIPAA Privacy Rule or Security Rule and as amended by HITECH and its accompanying regulations or any applicable state law or regulation concerning the privacy or security of patient information and claims based on its obligations pursuant to this Addendum in an amount not less than \$1,500,000 per claim. Such insurance shall be in the form of occurrence-based coverage and shall name the Covered Entity as an additional named insured. A copy of such policy or a certificate evidencing the policy shall be provided to the Covered Entity upon written request.

13. **Jointly Drafted Agreement.** This Agreement shall be deemed to be the jointly drafted agreement of the parties hereto and any rule of construction that a document shall be interpreted or construed against a drafter of such document shall not be applicable.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.

BUSINESS ASSOCIATE

COVERED ENTITY

Alliant Health Plans, Inc.

By: _____
Printed Name: _____
Title: _____
Date:

By: _____
Printed Name: Mark Mixer
Title: President & Chief Executive Officer
Date: