**Group Health Plan’s Business Associate Agreement**

**This agreement (“Agreement”) is effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and is made among \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Business Associate”), and the Commonwealth of Virginia Group Health Plan and The Local Choice Plan , administered by the Office of Health Benefits Programs (“Plans”) for the Department of Human Resource Management.**

**WITNESSETH AS FOLLOWS:**

**WHEREAS**, the Commonwealth of Virginia has established and maintains the Plans as programs that provide health care coverage for employees, former employees, and eligible dependents of employees pursuant to § 2.2-2818 and employees of local governments, local officers, teachers, and retirees, and the eligible dependents of such employees, officers, teachers, and retirees pursuant to § 2.2-1204, of the Code of Virginia. The Plans meet the definition of a “health plan” under the Health Insurance Portability and Accountability Act of 1996 and it’s implementing regulations (45 C.F.R. Parts 160-64);

**WHEREAS**, the Plans have retained Business Associate to provide certain administrative services with respect to the Plans which are described and set forth in a separate Administrative Services Agreement among those parties procured under RFP numbered \_\_\_\_\_\_\_\_\_ (“ASO Agreement”) which is in effect on the effective date of this Agreement, as amended or replaced from time to time;

**WHEREAS**, the parties to this Agreement desire to establish the terms under which Business Associate may use or disclose Protected Health Information (as defined herein) such that the Plans may comply with applicable requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160-64) (“HIPAA Privacy Regulations”);

**NOW, THEREFORE**, in consideration of these premises and the mutual promises and agreements hereinafter set forth, the Plans, and Business Associate hereby agree as follows:

**Definitions**

Catch-all definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

(a) Business Associate.  “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 NAME OF BA.

(b) Covered Entity.  “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean The Department of Human Resource Management, Office of Health Benefits.

(c) Covered Person. “Covered Person” shall mean the covered employee and the covered employees’ legal spouse and/or dependent children as specified in the plan document.

(d) HIPAA Rules.  “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

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

Business Associate agrees to:

(a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;

(b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;

(c) Report to covered entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;

1. Business Associate will promptly report to the Plans within five (5) business days of any use or disclosure of Covered Person’s Protected Health Information (whether by itself or by its subcontractors) not permitted by this Agreement.

(d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply through this Agreement and to the business associate with respect to such information;

(e) Make available protected health information in a designated record set to the “covered entity” as necessary to satisfy covered entity’s obligations under 45 CFR 164.524;

1. Non-HIPAA requests

Business Associate will continue to respond to Covered Person’s routine requests for access to their Protected Health Information as part of Business Associate’s normal customer service functions, if those requests do not qualify as a formal HIPAA request. In order to be deemed a “formal HIPAA request” the Covered Person must submit the request directly to the appropriate Plan, and follow all of the procedural requirements set forth in the appropriate Plan’s Privacy Notice. All requests submitted directly to the Business Associate will be handled as a non-HIPAA request.

1. HIPAA requests

Business Associate will assist the Plans in responding to Covered Person’s formal HIPAA requests by performing the following functions:

Upon receipt of written notice (includes faxed and emailed notice) from either of the Plans, Business Associate will make available for inspection and obtaining copies by the Plans, or at the Plans’ direction by the Covered Person (or the Covered Person’s personal representative), any Protected Health Information about the Covered Person created or received for or from the Plans, in Business Associate’s custody or control, so that the Plans may meet their access obligations under 45 Code of Federal Regulations § 164.524 within 10 calendar days.

Business Associate will not respond directly to Covered Person’s formal HIPAA requests. Business Associate will refer the Covered Person to the proper plan that is either The Local Chioce or theCommonwealth of Virginia Group HealthPlan, so that the respective Plan can coordinate and prepare a timely response to the Covered Person.

(f) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity’s obligations under 45 CFR 164.526;

1. Non-HIPAA requests

Business Associate will continue to respond to Covered Person’s routine requests to amend their Protected Health Information as part of Business Associate’s normal customer service functions, if those requests do not qualify as a formal HIPAA request. In order to be deemed a “formal HIPAA request” the Covered Person must submit the request directly to the Plan for which they are enrolled, and follow all of the procedural requirements set forth in the Plan’s Privacy Notice. All requests submitted directly to the Business Associate will be handled as a non-HIPAA request.

1. HIPAA requests

Business Associate will assist the Plans in responding to Covered Person’s formal HIPAA requests by performing the following functions:

Upon receipt of written notice (includes faxed and e-mailed notice) from the Plans, Business Associate will amend any portion of the Protected Health Information created or received for or from the Plans in Business Associate’s custody or control, so that the Plans may meet their amendment obligations under 45 Code of Federal Regulations § 164.526 within 10 calendar days.

Business Associate will not respond directly to Covered Person’s formal HIPAA requests. Business Associate will refer the Covered Person to the Plans so that the Plans can coordinate and prepare a timely response to the Covered Person.

(g) Maintain and make available the information required to provide an accounting of disclosures to the “covered entity” as necessary to satisfy covered entity’s obligations under 45 CFR 164.528;

1. Non-HIPAA requests

Business Associate will continue to respond to Covered Person’s routine requests for an accounting of disclosures of their Protected Health Information as part of Business Associate’s normal customer service functions, if those requests do not qualify as a formal HIPAA request. In order to be deemed a “formal HIPAA request” the Covered Person must submit the request directly to the Plan for which they are enrolled, and follow all of the procedural requirements set forth in the Plan’s Privacy Notice. All requests submitted directly to the Business Associate will be handled as a non-HIPAA request.

1. HIPAA requests

Business Associate will assist the Plans in responding to Covered Person’s formal HIPAA requests by performing the following functions:

So the Plans may meet their disclosure accounting obligations under 45 Code of Federal Regulations § 164.528, Business Associate will do the following:

a. Disclosure Tracking

Business Associate will record each disclosure that Business Associate makes of Covered Person’s Protected Health Information, which is not excepted from disclosure accounting under Section I.g.2.b. of this agreement.

The information about each disclosure that Business Associate must record (“Disclosure Information”) is (a) the disclosure date, (b) the name and (if known) address of the person or entity to whom Business Associate made the disclosure, (c) a brief description of the Protected Health Information disclosed, and (d) a brief statement of the purpose of the disclosure or a copy of any written request for disclosure under 45 Code of Federal Regulations §164.502(a)(2)(ii) or §164.512.

For repetitive disclosures of Covered Person’s Protected Health Information that Business Associate makes for a single purpose to the same person or entity, Business Associate may record (a) the Disclosure Information for the first of these repetitive disclosures, (b) the frequency, periodicity or number of these repetitive disclosures, and (c) the date of the last of these repetitive disclosures.

b. Exceptions from Disclosure Tracking

Business Associate will not be required to record Disclosure Information or otherwise account for disclosures of Covered Person’s Protected Health Information (a) for Treatment, Payment or Health Care Operations, (b) to the Covered Person who is the subject of the Protected Health Information, to that Covered Person’s personal representative, or to another person or entity authorized by the Covered Person (c) to persons involved in that Covered Person’s health care or payment for health care as provided by 45 Code of Federal Regulations § 164.510, (d) for notification for disaster relief purposes as provided by 45 Code of Federal Regulations § 164.510, (e) for national security or intelligence purposes, (f) to law enforcement officials or correctional institutions regarding inmates, (g) that are incidental to a use or disclosure that is permitted by this Agreement or the ASO Agreement, (h) as part of a limited data set in accordance with 45 Code of Federal Regulations § 164.514(e), or (i) that occurred prior to the Plan’s compliance date.

c. Disclosure Tracking Time Periods

Business Associate will have available for the Plans the Disclosure Information required by Section I.g.2.a above for the six (6) years immediately preceding the date of the Plans’ request for the Disclosure Information.

d. Provision of Disclosure Accounting

Upon receipt of written notice (includes faxed and e-mailed notice) from the Plans, Business Associate will make available to the Plans, or at the Plans’ direction to the Covered Person (or the Covered Person’s personal representative), the Disclosure Information regarding the Covered Person, so the Plans may meet their disclosure accounting obligations under 45 Code of Federal Regulations § 164.528 within 10 calendar days.

Business Associate will not respond directly to Covered Person’s formal HIPAA requests for an accounting of disclosures. Business Associate will refer the Covered Person to the Plans so that the Plans can coordinate and prepare a timely accounting to the Covered Person.

(h)  To the extent the business associate is to carry out one or more of 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); and

(i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

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

(a) Business associate may only use or disclose protected health information “as necessary to perform the services set forth in ASO Agreement.”

1. Protected Health Information Use

Business Associate may use Covered Person’s Protected Health Information as necessary for Business Associate to perform Data Aggregation services, and to create De-identified Information, Summary Health Information and/or Limited Data Sets.

1. Protected Health Information Disclosure

Business Associate may disclose, in conformance with the HIPAA Privacy Regulations, Covered Person’s Protected Health Information to make disclosures of De-identified Information, Limited Data Set Information, and Summary Health Information, and to make Incidental Disclosures.

(b) Business associate may use or disclose protected health information as required by law.

(c) Business associate agrees to make uses and disclosures and requests for protected health information consistent with covered entity’s minimum necessary policies and procedures that accomplish the intended purpose.

(d) Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity except for the specific uses and disclosures set forth below.

(e) Business associate may use protected health information for the proper management and administration of the business associate or to carry out the legal responsibilities of the business associate.

(f) Business associate may disclose protected health information for the proper management and administration of 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.

(g) Business associate may provide data aggregation services relating to the health care operations of the covered entity.

**III. 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 the notice of privacy practices of covered entity under 45 CFR 164.520, to the extent that such limitation may affect business associate’s use or disclosure of protected health information.

(b) Covered entity shall notify business associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect business associate’s use or disclosure of protected health information.

(c) Covered entity shall notify business associate of any restriction on the use or disclosure of protected health information that covered entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect business associate’s use or disclosure of protected health information.

**IV. 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 Subpart E of 45 CFR Part 164 if done by covered entity except if the business associate will use or disclose protected health information for, and the agreement includes provisions for, data aggregation or management and administration and legal responsibilities of the business associate.

**V. Term and Termination**

(a) Term. The Term of this Agreement shall be effective as of DATE, and shall terminate upon termination of the ASO Agreement or on the date covered entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. Business associate authorizes termination of this Agreement by covered entity, if covered entity determines business associate has violated a material term of the Agreement and business associate has not cured the breach or ended the violation within the time specified by covered entity.

(c) Obligations of Business Associate Upon Termination.

Upon termination of this Agreement for any reason, business associate, with respect to protected health information received from covered entity, or created, maintained, or received by business associate on behalf of covered entity, shall in accordance with its record retention policy that it applies to similar records, except to the extent a longer period of time is specified by the ASO Agreement or the law:

* 1. Retain only that protected health information which is necessary for business associate to continue its proper management and administration or to carry out its legal responsibilities;
  2. Return to covered entity or destroy the remaining protected health information that the business associate still maintains in any form;
  3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information;
  4. Not use or disclose the protected health information retained by business associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at Section II.f which applied prior to termination; and
  5. Return to covered entity or destroy the protected health information retained by business associate when it is no longer needed by business associate for its proper management and administration or to carry out its legal responsibilities.
  6. Transmit the protected health information to another business associate of the covered entity at termination, and obtain or ensure the destruction of protected health information created, received, or maintained by subcontractors.

(d) Survival.  The obligations of business associate under this Section shall survive the termination of this Agreement.

**VI. Miscellaneous**

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

(c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

(d) Business Associate is an independent contractor and not an agent of either of the Plans for any purpose under this agreement.

(e) Notice. Any notice or reporting required under this Agreement to be given to Business Associate shall be made in writing.

IN WITNESS WHEREOF, Plans and Business Associate have caused this Business Associate Agreement to be executed by duly authorized officers.

Commonwealth of Virginia Group Business Associate

Health Plan and the Local Choice Plan

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| Name: |  |  | Name: |  |
| Title: |  |  | Title: |  |
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