



HEALTH PLAN COMMUNITY

Business Associate Agreement

This Business Associate Agreement (“Agreement”) is entered into between McLaren Health Plan, Inc. (“Covered Entity”) and _____ (“Business Associate”), collectively “The Parties” as of _____, 201____ (“Effective Date”).

I. Background

To the extent that Covered Entity possesses PHI, which may be disclosed or made available to Business Associate, the purpose of this Agreement is to comply with the business associate agreement requirements as set forth in HIPAA and as amended by HITECH.

In the event of any inconsistency between the provisions of this Agreement and the HIPAA Privacy and Security Rules, as may be amended from time to time by the Secretary or as a result of interpretations by HHS, a court, or another regulatory agency, the HIPAA Privacy and Security Rules shall prevail. In the event of a conflict among the interpretation of these entities, the conflict will be resolved in accordance with rules of precedence.

II. Definitions

- a. *Breach* shall have the meaning given in 45 CFR §164.402.
- b. *Designated Record Set* shall have the meaning given in 45 CFR §164.501
- c. *Electronic Protected Health Information* shall have the meaning given in 45 CFR §160.103.
- d. *HIPAA* shall mean the Health Insurance Portability and Accountability Act of 1996 and any amendments thereto.
- e. *HIPAA Privacy and Security Rules* shall mean HIPAA, HITECH, 45 CFR parts 160-164, and any other implementing regulations pertaining to the privacy or security of PHI.
- f. *HITECH* shall mean the Standards for Privacy and Security of Personal Health Information in Subtitle D (Privacy) of the Health Information Technology Economic and Clinical Health Act of 2009
- g. *Limited Data Set* shall have the meaning given in 45 CFR §164.514(e)(2)
- h. *Minimum Necessary* shall mean a Limited Data Set or, if needed, the minimum necessary PHI to accomplish the intended purpose of a use, disclosure or request, until the effective date of the guidance required by §13405(b)(1)(B) of HITECH, at which time the term shall have the meaning specified in such guidance.
- i. *Protected Health Information (PHI)* shall have the meaning given in 45 CFR §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

j. *Required by Law* shall have the meaning given in 45 CFR §164.103.

k. *Secretary* shall mean the Secretary of the Department of Health and Human Services or his or her designee.

l. *Unsecured Protected Health Information* shall have the meaning given in 45 CFR §164.402.

III. Business Associate Acknowledgements, Obligations, Permitted Uses and Disclosures

a. Business Associate acknowledges it is subject to the requirements of the HIPAA Privacy and Security Rules to the extent required by HITECH.

b. Except as otherwise expressly limited in the Agreement, Business Associate may use or disclose PHI:

i. To perform functions, activities, or services for, or on behalf of, Covered Entity in connection with the Agreement and any other agreements in effect between Covered Entity and Business Associate.

ii. For the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that if Business Associate further discloses PHI:

1. The disclosure is Required by Law; or
2. The Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially 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 agrees to notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.

iii. To provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B)

iv. To report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1)

Business Associate agrees to not use or further disclose PHI other than as permitted or required by the Agreement or as Required by Law.

c. Except as permitted by 45 C.F.R. §164.502(b)(2), Business Associate agrees to limit its use, disclosure and requests of PHI under the Agreement to the Minimum Necessary.

d. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement and will implement administrative, physical, and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Privacy and Security Rules.

e. Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Agreement and 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.

f. Business Associate agrees to immediately report to Covered Entity as soon as practicable, but not later than 60 days, after becoming aware of any Breach of Unsecured Protected Health Information in accordance with 45 CFR §164.410.

g. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Moreover, Business Associate shall ensure that any such agent or subcontractor agrees to implement reasonable and appropriate safeguards to protect Covered Entity's Electronic PHI as required by the HIPAA Privacy and Security Rules.

h. 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 a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.

i. Business Associate agrees to provide to Covered Entity or an individual, in time and manner reasonably designated by Covered Entity, information collected in accordance with Section III. (h) of this Agreement, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of their PHI in accordance with 45 CFR §164.528.

j. If Business Associate maintains PHI in a Designated Record Set for Covered Entity, Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner reasonably designated by Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524.

k. If Business Associate maintains PHI in a Designated Record Set for Covered Entity, 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 CFR §164.526 at the request of Covered Entity or an individual, and in the time and manner reasonably designated by Covered Entity.

l. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Privacy and Security Rules.

m. Business Associate agrees it shall not directly or indirectly receive remuneration in exchange for disclosing PHI received from or on behalf of Covered Entity except as specifically permitted by HITECH Section 13405 and any implementing regulations.

IV. Covered Entity Obligations

a. Covered Entity shall not request Business Associate to use or disclose PHI in any

manner that would not be permissible under the HIPAA Privacy and Security Rules if done by Covered Entity.

b. Except as permitted by 45 CFR §164.502(b)(2), Covered Entity agrees to limit its use, disclosure and requests of PHI under the Agreement to the Minimum Necessary.

c. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

d. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522.

e. Covered Entity shall be responsible for complying with the Breach notification rules in HITECH §13402 and implementing regulations (45 CFR §164.402).

V. Term and Termination

a. This Agreement shall remain in effect until such time as all other agreements between Covered Entity and Business Associate are terminated unless terminated earlier as provided herein.

b. Upon one party's knowledge of a material violation of this Agreement by the other party, the non-violating party shall either: (a) provide an opportunity for the violating party to cure the violation or end the violation and terminate this Agreement (and any underlying agreement) if the violating party does not cure the violation or end the violation within ten (10) business days; (b) immediately terminate this Agreement (and any underlying agreement) if cure is not possible; or (c) if neither termination nor cure are feasible, the non-violating party shall report the violation to the Secretary.

c. Except as provided in paragraph (d) of this section, upon termination 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. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

d. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Upon mutual agreement of the Parties that return or destruction of PHI is not feasible, 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 unfeasible, for so long as Business Associate maintains such PHI.

VI. Miscellaneous

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

b. *Amendment.* The parties mutually agree to enter into good faith negotiations to amend this Agreement from time to time in order for Covered Entity or Business Associate to comply with

the requirements of HIPAA or HITECH, as they may be amended from time to time, and any implementing regulations that may be promulgated or revised from time to time.

c. *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Privacy and Security Rules.

d. *No Third Party Beneficiaries.* The parties agree that there shall be no third party beneficiaries to this contract, including but not limited to individuals whose PHI is created, received, used and/or disclosed by this Business Associate in its role as business associate.

e. *No assignment.* Covered Entity and Business Associate agree that this Agreement will not be assignable by either party except as expressly provided herein.

f. *Binding Effect.* This Agreement shall be binding upon the parties hereto and their successors and assigns.

g. *Survival.* The respective rights and obligations of Business Associate, as described above in Section III., shall survive the termination of this Agreement.

h. *Address for Notices to Business Associate.* Any notices that may be required to be provided to each party under the terms of this agreement shall be provided in writing via certified mail to the following addresses:

For Covered Entity:

McLaren Health Plan, Inc.
Attn: Privacy Officer
G3245 Beecher Road
Flint, MI 48532
Phone: (517) 913-2622

For Business Associate:

Attn: _____

Phone: _____

i. *Entire Agreement.* This Agreement constitutes the entire Agreement between Covered Entity and Business Associate with respect to the matters covered herein. Covered Entity and Business Associate agree that there were no inducements or representations leading to the execution of this Agreement, nor any other agreements between them, other than those contained in this Agreement.

j. *Counterparts.* This Agreement may be executed in any number of counterparts, which, when taken together, shall constitute one original.

MCLAREN HEALTH PLAN, INC.
Covered Entity

By: _____
Nancy Jenkins
Its: President and CEO
Date: _____

Business Associate

By: _____

Its: _____
Date: _____