

HIPAA BUSINESS ASSOCIATE AGREEMENT

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT (hereinafter "Agreement"), made the ____ day of _____, _____, is between INSURANCE GROUP (as defined herein) and _____ (hereinafter "Subcontractor"). Insurance Group and Subcontractor may be referred to herein individually as "Party" or collectively as "Parties."

"Insurance Group," as used herein, shall mean one or more of the following entities:

- (a) Farm and Family Insurance Associates, Inc.
- (b) Producers XL
- (c) The Keehner Group
- (d) New Mexico Brokerage
- (e) John Rupright
- (f) Dexter Umekubo
- (g) Angela Hughes
- (h) Donald Keehner
- (i) Brett Adams

BACKGROUND

Insurance Group, which is made up of business associates of one or more covered entities, acknowledges that it is subject to the Privacy and Security Rules (45 CFR Parts 160 and 164) promulgated by the United States Department of Health and Human Services Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191.

In the course of carrying out its business with Insurance Group, Subcontractor may come into contact with, use, or disclose Protected Health Information ("PHI"). In accordance with the federal privacy and security regulations set forth at 45 CFR Part 160 and Part 164, Subparts A, C, D, and E, which require Insurance Group to have a written contract or other arrangement with each of its subcontractors, the Parties wish to establish satisfactory assurances that Subcontractor will appropriately safeguard PHI that Subcontractor may receive (if any) from or on behalf of Insurance Group, and, therefore, agree to this Agreement.

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. The term "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 Insurance Group.
- (b) Covered Entity. The term "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103.
- (c) Subcontractor. The term "Subcontractor" shall generally have the same meaning as the term "subcontractor" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean
- (d) HIPAA Rules. The term "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

OBLIGATIONS AND ACTIVITIES OF SUBCONTRACTOR

Subcontractor agrees to the following material duties and obligations to:

- (a) Not use or disclose Protected Health Information other than as permitted or required by the Agreement, a written Agreement between the Parties, 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 Insurance Group 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 within 20 days of becoming aware of such use or disclosure or incident;
- (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors of Subcontractor that create, receive, maintain, or transmit Protected Health Information on behalf of Subcontractor or Insurance Group agree to the same restrictions, conditions, and requirements that apply to Subcontractor with respect to such information;
- (e) Make available Protected Health Information in a designated record set to the covered entity, Insurance Group, or the "individual or the individual's designee" as necessary to satisfy a covered entity's or Insurance Group's obligations under 45 CFR 164.524;
- (f) Make any amendment(s) to Protected Health Information in a designated record set as directed or agreed to by Insurance Group's covered entity or Insurance Group pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy a covered entity's or Insurance Group's obligations under 45 CFR 164.526;
- (g) Maintain and make available the information required to provide an accounting of disclosures to Insurance Group's covered entity, Insurance Group, or an

individual as necessary to satisfy a covered entity's or Insurance Group's obligations under 45 CFR 164.528;

- (h) To the extent Subcontractor is to carry out one or more of Insurance Group's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to Insurance Group 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.
- (j) At the request of Insurance Group, provide proof of policies and procedures evidencing compliance with this Agreement and 45 CFR Part 160 and Part 164.

SUBCONTRACTOR'S DUTY TO NOTIFY INDIVIDUALS

At the request of Insurance Group, Subcontractor agrees to provide breach notification to individuals, the HHS Office for Civil rights (OCR), and the media, on behalf of Insurance Group or a covered entity of Insurance Group or Subcontractor of breaches for which Subcontractor is responsible.

PERMITTED USES AND DISCLOSURES BY SUBCONTRACTOR

- (a) Subcontractor may only use or disclose Protected Health Information as necessary to perform its work under its contract or agreement with one or more of Subcontractor's Covered Entities.
- (b) Subcontractor may use or disclose Protected Health Information as required by law.
- (c) Subcontractor agrees use, disclose, and request only the minimum necessary amount of Protected Health Information needed to accomplish the purpose of the use, disclosure, or request.
- (d) Subcontractor may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Insurance Group or a covered entity.

OBLIGATIONS OF INSURANCE GROUP

- (b) Insurance Group shall notify Subcontractor 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 Subcontractor's use or disclosure of Protected Health Information.
- (c) Insurance Group shall notify Subcontractor of any restriction on the use or

disclosure of Protected Health Information that Insurance Group has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Subcontractor's use or disclosure of Protected Health Information.

PERMISSIBLE REQUESTS BY INSURANCE GROUP

Insurance Group shall not request Subcontractor 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 Insurance Group or a covered entity.

TERM AND TERMINATION

- (a) Term. The Term of this Agreement shall be effective as of _____, and shall only terminate if Insurance Group terminates for cause as authorized in paragraph (b) of this Section.
- (b) Termination for Cause. Subcontractor authorizes termination of this Agreement by Insurance Group, if Insurance Group determines Subcontractor has violated a material term of the Agreement.
- (c) Obligations of Subcontractor upon Termination. Upon termination of this Agreement for any reason, Subcontractor shall return to Insurance Group or, if agreed to by Insurance Group, destroy or transmit to another subcontractor of Insurance Group all Protected Health Information received from Insurance Group, or created, maintained, or received by Subcontractor on behalf of Insurance Group, that the Subcontractor still maintains in any form. Subcontractor shall retain no copies of the Protected Health Information.
- (d) Survival. The obligations of Subcontractor under this Agreement shall survive the termination of this Agreement.

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.

INDEMNIFICATION

Subcontractor agrees to indemnify and hold harmless Insurance Group from and against all

claims, demands, suits, costs, expenses, liabilities, fines, penalties, losses, and damages including, without limitation, direct, indirect and consequential damages, court costs and reasonable attorney's fees, arising from or in any respect related to a breach of this Agreement, an unauthorized use or disclosure of PHI, or a violation of 45 CFR Part 160 or Part 164 committed by Subcontractor, its employees, or its agents.

I, _____ have read, understand, and comply to agree with the rules and regulations imposed in this agreement.

Signature

Date