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Corporate Divisional

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INITIAL APPROVAL DATE:
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5/17

POLICY NUMBER:
5523

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APPLIES TO PRODUCT TYPE:

Medi-Cal CMC

PAGE:
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POLICY APPLIES TO:
All Divisions and Departments

CLASSIFICATION SERIES:
Compliance

SUBJECT:
Policy on Business Associate Arrangements

Purpose/Statement:

The purpose of this policy is to outline the procedures of Community Health Group and Community Health Group Partnership Plan (collectively, "CHG") for entering into and maintaining Business Associate arrangements.

1.0 POLICY

1.1. It is the policy of CHG to enter into appropriately drafted contracts with its Business Associates, in accordance with the requirements of the Privacy Standards of the Health Insurance Portability and Accountability Act of 1996, 45 CFR Parts 160 and 164 ("HIPAA").

2.0 AREAS INVOLVED

2.1. Departments with arrangements with third parties involving PHI.

3.0 CROSS-REFERENCED DOCUMENTS

3.1. Policy on Uses and Disclosures of PHI in Compliance with the Minimum Necessary Standards

3.2. Compliance Checklist for Business Associate Contracts

3.3. Form 2: Business Associate Contract

3.4. Policy on Documentation and Document Retention

4.0 KEY DEFINITIONS

The following are definitions of key terms used in this policy. The definitions of other capitalized terms used in this policy and not defined in this Section 4.0 can be found in the Glossary.

4.1. **"Business Associate"** means a person or entity who is not a member of CHG's Workforce and who, on behalf of CHG, performs or assists in the performance of:

- a. A function or activity involving the Use or Disclosure of PHI, including claims processing or administration, data analysis,



processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and repricing; or

- b. Any other function or activity regulated by HIPAA; or
- c. Provides legal, actuarial, accounting, consulting, data aggregation (as defined in HIPAA), management, administrative, accreditation, or financial services to or for CHG.
- d. A Subcontractor of a Business Associate.

4.2. “Business Associate Contract” means the contract language as set forth in Form 2: Business Associate Contract, between CHG and its Business Associates that allows the Business Associate to create or receive PHI on behalf of CHG. The term “Business Associate Contract” includes both stand-alone contracts and amendments to existing services agreements, as well as Business Associate Contract language that is part of a new services agreement. A Business Associate Contract is not required for Disclosures by CHG to a Health Care Provider regarding an individual’s Treatment.

4.3. “Disclose” or “Disclosure” means, with respect to PHI, the release of, transfer of, provision of access to, or divulging in any manner, of PHI outside of CHG’s internal operations or to other than its Workforce Members.

4.4. “Protected Health Information (“PHI”)” means information that is: (i) created or received by a Health Care Provider, Health Plan, employer, or Health Care Clearinghouse; (ii) relates to the past, present, or future physical or mental health or condition of an individual; the provision of Health Care to an individual; or the past, present, or future Payment for the provision of Health Care to an individual; (iii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

4.5. “Subcontractor” means a person to whom a business associate delegates a function, activity or service, other than in the capacity of a member of the workforce of such business associate.

4.6. “Use” or “Uses” means, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such information within CHG’s internal operations.

4.7. “Workforce” or “Workforce Member” means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for CHG, is under the direct control of such entity, whether or not they are paid by CHG.

5.0 PROCEDURE:

5.1. Administration of Business Associate Relationship

5.1.1. The HIPAA Task Force [or designated committee] shall use the Compliance Checklist for Business Associate Contracts, attached as



Attachment A, to identify Business Associate relationships and prepare, negotiating, and to create, administer and maintain required Business Associate Contracts.

5.1.1.1 The Compliance Officer shall provide guidance in identifying Business Associate relationships covered by this policy and shall make the final determination as to whether an arrangement with a third-party constitutes a Business Associate arrangement.

5.1.1.2 If there is an existing contract with a vendor in effect prior to January 25, 2013, and it is not renewed or modified between March 26, 2013 and September 23, 2014, it shall be deemed compliant until the earlier of: (i) the date such contract is renewed or modified, or (ii) September 23, 2014. Accordingly, CHG may delay modifying such agreements to incorporate Business Associate Contract language until the agreement is up for renewal or modification, or September 23, 2014, which ever occurs first. Business Associate contracts entered into after January 25, 2013 must comply with all requirements by September 23, 2013. Notwithstanding the ability to delay, CHG shall still remain responsible for ensuring that it obtains the information necessary from Business Associate for CHG to comply with HIPAA including making information held by Business Associate available to the Secretary of Health and Human Services and complying with the Policy on Individuals' Rights (access, amendment, restriction, accounting). In the event that CHG avails itself of this Section 5.1.1.2, Privacy Officer shall be responsible for tracking agreements with these vendors or third parties, ensuring that a Business Associate Contract is timely entered into in accordance with this Section, and obtaining information from these vendors or third parties in the interim period needed by CHG to comply with HIPAA.

5.1.2. The HIPAA Task Force will assign responsibility for the tasks outlined on Attachment A and assign appropriate deadlines.

5.1.3. The Task Force is responsible for ensuring that Business Associate Contracts are sent to all identified Business Associates.

5.1.4. Any proposed changes to a Business Associate Contract must be approved by the Privacy Officer.

5.1.5. In the event that a contractor or vendor refuses to sign a Business Associate Contract, the Workforce Member or Department that receives such refusal shall forward all relevant information regarding the refusal to the Privacy Officer.

5.1.6. The Privacy Officer shall be responsible for handling and resolving refusals by contractors or vendors to sign Business Associate Contracts



or disputes regarding the language contained in such Business Associate Contracts.

5.1.7. The Contract Administrator shall be responsible for:

5.1.7.1 Identifying, preparing, reviewing, administering and maintaining CHGs' Business Associate Contracts, new Business Associate contractual arrangements and Business Associate Contract renewals.

5.1.7.2 A log of all of CHG's contracts shall be forwarded to the Privacy Officer [or other designated individual] on a semi-annual basis. Contracts that include Business Associate Contract language shall be specifically identified. The Privacy Officer or designee shall review such log to identify any arrangements that may be subject to this policy but that do not include Business Associate contractual language.

5.1.7.3 Privacy Officer shall be responsible for implementing storage, access, filing, record retention, and contract administration policies and procedures, including those contracts incorporating Business Associate Contract language.

5.2. Disclosures of Protected Health Information to Business Associates

5.2.1. All Workforce Members shall notify the Contract Administrator [or other designated individual or department] of any new, renewal of, or potential Business Associate arrangement.

5.2.2. The Contract Administrator [or other designated individual or department] shall notify Privacy Officer of a Business Associate arrangement (either new or a renewal) and shall provide a description of the general PHI that needs to be Used and Disclosed to a specific Business Associate under the terms of a written agreement.

5.2.3. Privacy Officer shall determine if Disclosure of such PHI meets the Minimum Necessary standards pursuant to the Policy on Uses and Disclosures of PHI in Compliance with the Minimum Necessary Standards. Privacy Officer shall provide the Contract Administrator with confirmation as to whether the PHI is the Minimum Necessary that may be Used or Disclosed to the contemplated Business Associate.



6.0 POTENTIAL VIOLATIONS BY BUSINESS ASSOCIATES

- 6.1.** In the event that a Workforce Member has reason to believe that a Business Associate has engaged in an activity or practice, or failed to engage in an activity, that could constitute a breach or violation of the Business Associate's obligations under the Business Associate Contract, such Workforce Member will immediately contact the Privacy Officer or designee.
- 6.2.** The Privacy Officer or designee shall take steps necessary to conduct an investigation into the Business Associate's alleged breach or violation of the terms of the Business Associate Contract.
- 6.2.1. The Privacy Officer or designee, in consultation with the appropriate Workforce Members and outside legal counsel as necessary, shall take reasonable steps to cure breaches or violations by Business Associates, such steps including, but not limited to, notifying the Business Associate of the breach or violation and providing the Business Associate with the opportunity to cure the breach or violation pursuant to the terms of the Business Associate Contract.
- 6.2.2. In the event that the Privacy Officer, in consultation with appropriate Workforce Members and outside legal counsel as necessary, determines that the Business Associate has failed to cure the breach or end the violation, the Privacy Officer may terminate the Business Associate Contract, if feasible, or if termination of such Contract is not feasible, report the problem to the Secretary of the Department of Health and Human Services.

7.0 DOCUMENTATION RETENTION

Contracts will be maintained in the Contracting Department.

8.0 CONTACT FOR QUESTIONS

If a Workforce Member has questions or is uncertain about the correct procedure for Business Associate arrangements, such Workforce Member should contact the Contracting Department.



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CLASSIFICATION SERIES:

Compliance

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Access Privileges: All _____

Regulatory:

NCQA:

Attachments: None

Policy Status: Signed (Signature on File) Active Draft Policy in Development

Approved By: Signature: _____

Division Chief: _____ Chief Compliance & Regulatory Affairs Officer

Date: _____

Signature: _____

Division Chief: _____ Chief Executive Officer

Date: _____

ATTACHMENT A

Compliance Checklist for Business Associate Contracts

1. Identify who will be responsible for the preparing, reviewing, administering and maintaining the required Business Associate contracts
 - i. Privacy Officer
 - ii. Security Officer
 - iii. Contract Administrator
 - iv. Legal Counsel
 1. In-house
 2. Outside
 - v. Compliance Officer
 - vi. HIPAA Committee
 - vii. Medical Records Director
 - viii. Operating Officer
 - ix. Other
2. Determine whether CHG's contracts are centralized or de-centralized.
3. Review the policies and procedures for contract administration and review and revise as needed to incorporate Business Associate Contract requirements.
4. Determine storage, access, filing, maintenance policies, record retention policies, and other policies and procedures.
5. Identify and inventory all existing contracts (oral and written), as well as all relationships/arrangements that may involve Disclosure of PHI by CHG.
 - i. Who are you doing business with? Review existing written agreements.
 - ii. Identify the parties to existing written agreements and determine which of them are Business Associates
 - iii. Interview key employees to ascertain if oral arrangements constituting Business Associate arrangements exist.
 - iv. Review vendor list from finance office (i.e. the accounts payable ledger) to identify written or oral agreements that might have been missed.
 - v. Review arrangements or agreements with the following:

accountants
accounting services
accreditation services
actuarial services
adjudication services
administrative services
ambulance companies
ambulatory surgery centers and facilities
architects and builders
assisted living homes
attorneys
billing service companies
board of directors of the covered entity
care management programs
chiropractors
civic groups and other local groups who help out on ad hoc basis with patients who are hospitalized for a traumatic event or complicated illness (e.g., Shrine Temples, Ronald McDonald House, etc.)
claims processing companies
clinical labs
clinical psychologists
clinical radiology
clinical therapists
clinics or infirmaries provided by employers
coding providers
collection agencies
colleges, universities, and training schools
community health management information systems
computer maintenance services and companies
consulting services
copy services

coroners
counties
data aggregation services
dental clinics
dentists
diagnostic radiography
disease management programs
durable medical equipment businesses
employee assistance programs
employers
employers with self-administered ERISA plans
financial service companies
financial services
funeral directors
government health data systems
group health plan sponsors
group health plans
hardware vendors
health care clearinghouses
health care consultants (risk management, information technology, billing, coding and management)
health care providers (direct and indirect)
health insurance companies
health oversight agencies
HMOs
home health care
hospice care
hospital employees
hospitals
HVAC vendors
insurance brokers
interpreter services (both deaf and foreign language)

janitorial, waste disposal and recycling services and companies
laboratories
law enforcement officials
law firms and staff
legal services
maintenance contractors
management services
marketing services or firms
Medicaid
medical examiners
medical record moving companies
medical record storage companies
medical record transcription services
medical researchers
medical software vendors
Medicare
mental health professionals
microfilm conversion providers
national and state hospital associations
national and state medical associations
non-federally funded schools
nurses
nursing homes
nursing temps
occupational therapists
optometrists
organ procurement organizations
outsourced document shredders
paramedics
pathology labs
patients and their families
pharmacies
pharmacists
pharmacy – brick & mortar

pharmacy – mail
pharmacy – web
pharmacy benefit managers
physical therapists
physicians
podiatrists
portable and fixed mammography
private health data systems
professional liability insurance carriers
radiology centers
repricing company
research organizations
school nurses
skilled nursing facilities
software vendors
student clinics
temporary staffing companies
third party administrators
trade associations
value added networks

6. Rewrite or amend the contract/arrangement as needed to include Business Associate Contract language.
 - i. Prepare timeline
 - ii. Use formal notices to document due diligence
7. Implement ongoing contract administration and contract policies and procedures for Business Associate Contracts in accordance with CHG's procedures for contract administration.
8. Implement ongoing record retention policies and procedures for Business Associate Contracts in compliance with the Policy on Documentation and Document Retention.
9. Prepare response strategy related to contracts that include Business Associate provisions, for internal and external audit investigations; *i.e.* anticipated investigation and review by an administrative agency such as the Office for Civil Rights, investigating patient complaints, conducting internal compliance audits.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“**Agreement**”) is entered into between Community Health Group (“**Covered Entity**”) and _____ (“**Business Associate**”), effective as of _____ (the “**Effective Date**”).

WHEREAS, Covered Entity and Business Associate have entered into, or plan to enter into, an agreement or other documented arrangement (the “**Underlying Agreement**”), pursuant to which Business Associate may provide services for Covered Entity that require Business Associate to create, receive, maintain, or transmit Protected Health Information (“**PHI**”) that is confidential under state and/or federal law; and

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed by Covered Entity to Business Associate, or collected or created by Business Associate pursuant to the Underlying Agreement, in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“**HIPAA**”), and the regulations promulgated thereunder, including, without limitation, the regulations codified at 45 CFR Parts 160 and 164 (“**HIPAA Regulations**”); and the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, and its implementing regulations and guidance issued by the Secretary of the Department of Health and Human Services (the “**Secretary**”) (the “**HITECH Act**”), and other applicable state and federal laws, all as amended from time to time; and

WHEREAS, the HIPAA Regulations require Covered Entity to enter into an agreement with Business Associate meeting certain requirements with respect to the Use and Disclosure of PHI, which are met by this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and the exchange of information pursuant to this Agreement, the parties agree as follows:

1. **Definitions.**

Capitalized terms used herein without definition shall have the meanings ascribed to them in the HIPAA Regulations or the HITECH Act, as applicable.

2. **Obligations of Business Associate.**

a. Permitted Uses and Disclosures. Business Associate shall not Use or Disclose PHI except for the purpose of performing Business Associate’s obligations under the Underlying Agreement and as permitted by this Agreement or as Required By Law. Further, Business Associate shall not Use or Disclose PHI in any manner that would constitute a violation of Subpart E of 45 CFR Part 164 if so used by Covered Entity, except that Business Associate may Use PHI (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; or (iii) for Data Aggregation purposes, if requested by Covered Entity, in connection with the Health Care Operations of Covered Entity. Business Associate may Disclose PHI for the proper management and administration of Business Associate and to carry out its legal responsibilities, provided that with respect to any such Disclosure either: (i) the Disclosure is Required by Law; or (ii) Business Associate obtains a written agreement from the person to whom the PHI is to be Disclosed that such person will hold the PHI in confidence and will not use and further disclose such PHI except as Required by Law and for the purpose(s) for which it was Disclosed by Business Associate to such person,

and that such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached. Business Associate is not authorized to use the PHI to create de-identified information. To the extent that Business Associate carries out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, Business Associate must comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

b. Appropriate Safeguards. Business Associate shall implement administrative, physical, and technical safeguards 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. Business Associate shall comply with Subpart C of 45 CFR Part 16 with respect to Electronic PHI to prevent the Use or Disclosure of PHI other than as contemplated by the Underlying Agreement and this Agreement.

c. Compliance with Privacy Provisions. Business Associate shall only Use and Disclose PHI in compliance with each applicable requirement of 45 CFR § 164.504(e). Business Associate shall comply with all requirements of the HITECH Act related to privacy and applicable as if Business Associate were a "covered entity," as such term is defined in HIPAA.

d. Duty to Mitigate. 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.

e. Business Associate's Obligations Related to Red Flags Rule. If applicable, and upon the effective compliance date, Business Associate shall be responsible for implementation of an identity theft prevention program to detect, prevent, and mitigate identity theft related to any covered accounts (as that term is defined in the Federal Trade Commission's Red Flags Rule) that Business Associate creates or maintains on behalf of the Covered Entity. Such program shall comply with the Federal Trade Commission's Red Flags Rule, 16 CFR Part 681. Business Associate further agrees to promptly (and in all cases within three (3) days) notify Covered Entity in writing in the event it discovers an incident involving identity theft related to any such accounts.

3. Reporting.

a. Security Incidents and/or Unauthorized Use or Disclosure. Business Associate shall report to Covered Entity, in writing, a Security Incident or any Use and/or Disclosure of PHI other than as provided for by this Agreement within a reasonable time of becoming aware of such Security Incident and/or unauthorized Use or Disclosure (but not later than three (3) days thereafter), in accordance with the notice provisions set forth herein. Business Associate shall take prompt action to cure any such deficiencies as reasonably requested by Covered Entity. Business Associate shall investigate each unauthorized access, acquisition, use, or disclosure of Covered Entity's PHI that it discovers to determine whether such unauthorized access, acquisition, Use, or Disclosure constitutes a reportable Breach of Unsecured PHI. Business Associate shall document and retain records of its investigation of any Breach, including its reports to Covered Entity under this Section 3.a. Upon request of Covered Entity, Business Associate shall furnish to Covered Entity the documentation of its investigation and an assessment of whether such unauthorized access, acquisition, Use or Disclosure constitutes a reportable Breach. If such Security Incident or unauthorized Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Business Associate shall comply with the additional requirements of Section 3.b below.

b. Breach of Unsecured PHI. The provisions of this Section 3.b are effective with respect to the Discovery of a Breach of Unsecured PHI occurring on or after September 23, 2009. If Business Associate determines that a reportable Breach of Unsecured PHI has occurred, Business Associate shall provide a written report to Covered Entity within three (3) days of the date Business Associate Discovers such Breach. Business Associate shall be deemed to have discovered a Breach as of the first day that the Breach is either known to Business Associate or any of its employees, officers or agents, other than the person who committed the Breach, or by exercising reasonable diligence should have been known to Business Associate or any of its employees, officers or agents, other than the person who committed the Breach. To the extent the information is available to Business Associate, Business Associate's written report shall include the information required by 45 CFR § 164.410(c). Business Associate shall promptly supplement the written report with additional information regarding the Breach as it obtains such information. Business Associate shall cooperate with Covered Entity in meeting the Covered Entity's obligations under the HITECH Act with respect to such Breach. Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the Secretary and, if applicable, the media, as required by the HITECH Act. Business Associate shall reimburse Covered Entity for its reasonable costs and expenses in providing the notification, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance) for affected individuals whose PHI has or may have been compromised as a result of the Breach. In order to be reimbursed by Business Associate, Covered Entity must provide to Business Associate a written accounting of Covered Entity's actual costs and, to the extent applicable, copies of receipts or bills with respect thereto.

4. **Business Associate's Agents.** To the extent that Business Associate uses one or more subcontractors or agents to provide services under the Underlying Agreement, and such subcontractors or agents create, maintain, receive, or transmit PHI, Business Associate shall require each such subcontractor or agent to execute a Business Associate Agreement that imposes on such subcontractors and agents the same restrictions, conditions, and requirements that apply through this Agreement to Business Associate with respect to such information (the "**Subcontractors Agreement**"). The Subcontractors Agreement shall further identify Covered Entity as a third party beneficiary with rights of enforcement and indemnification from such subcontractors or agents in the event of any violation of the Subcontractors Agreement, HIPAA or the HITECH Act. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such agreements.

5. **Rights of Individuals.**

a. Access to PHI. Within ten (10) days of receipt of a request, Business Associate shall make PHI maintained in a Designated Record Set available to Covered Entity or, as directed by Covered Entity, to an individual to enable Covered Entity to fulfill its obligations under 45 CFR § 164.524. Subject to Section 5.b below, in the event that any individual requests access to PHI directly from Business Associate, Business Associate shall forward a copy of such request to Covered Entity and shall fully cooperate with Covered Entity in responding to such request. A denial of access to requested PHI shall not be made without the prior written consent of Covered Entity.

b. Access to Electronic Health Records. If Business Associate is deemed to use or maintain an Electronic Health Record on behalf of Covered Entity with respect to PHI, then, to the extent an individual has the right to request a copy of the PHI maintained in such Electronic

Health Record pursuant to 45 CFR § 164.524 and makes such a request to Business Associate, Business Associate shall provide such individual with a copy of the information contained in such Electronic Health Record in an electronic format and, if the individual so chooses, transmit such copy directly to an entity or person designated by the individual. Business Associate may charge a fee to the individual for providing a copy of such information, but such fee may not exceed the Business Associate's labor costs in responding to the request for the copy. The provisions of 45 CFR § 164.524, including the exceptions to the requirement to provide a copy of PHI, shall otherwise apply and Business Associate shall comply therewith as if Business Associate were the "covered entity," as such term is defined in HIPAA. At Covered Entity's request, Business Associate shall provide Covered Entity with a copy of an individual's PHI maintained in an Electronic Health Record in the electronic form and format requested by Covered Entity if it is readily reproducible in such form and format, and, if not, in such other form and format agreed to by Covered Entity, and in a time and manner designated by Covered Entity in order to enable Covered Entity to fulfill its obligations under 45 CFR § 164.524, as amended by the HITECH Act.

c. Amendment of PHI. 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 designated by Covered Entity.

d. Accounting Rights. This Section 5.d is subject to Section 5.e below. Business Associate shall make available to Covered Entity in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual, in accordance with 45 CFR § 164.528, incorporating exceptions to such accounting designated under such regulation. Such accounting is limited to disclosures that were made in the six (6) years prior to the request and shall not include any disclosures that were made prior to the compliance date of the HIPAA Regulations. Business Associate shall provide such information as is necessary to provide an accounting within ten (10) days of Covered Entity's request. Such accounting must be provided without cost to the individual or to Covered Entity if it is the first accounting requested by an individual within any twelve (12) month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs the Covered Entity and the Covered Entity informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination of this Agreement and shall continue as long as Business Associate maintains PHI.

e. Accounting of Disclosures of Electronic Health Records. The provisions of this Section 5.e shall be effective on the date specified in the HITECH Act. If Business Associate is deemed to use or maintain an Electronic Health Record on behalf of Covered Entity, then, in addition to complying with the requirements set forth in Section 5.d., above, Business Associate shall maintain an accounting of any Disclosures made through such Electronic Health Record for Treatment, Payment and Health Care Operations, as applicable. Such accounting shall comply with the requirements of the HITECH Act. Upon request by Covered Entity, Business Associate shall provide such accounting to Covered Entity in the time and manner specified by Covered Entity and in compliance with the HITECH Act. Alternatively, if Covered Entity responds to an individual's request for an accounting of Disclosures made through an Electronic Health Record by providing the requesting individual with a list of all business associates acting on behalf of Covered Entity, then Business Associate shall provide such accounting directly to the requesting individual in the time and manner specified by the HITECH Act.

f. Agreement to Restrict Disclosure. If Covered Entity is required to comply with a restriction on the Disclosure of PHI pursuant to Section 13405 of the HITECH Act, then Covered Entity shall, to the extent necessary to comply with such restriction, provide written notice to Business Associate of the name of the individual requesting the restriction and the PHI affected thereby. Business Associate shall, upon receipt of such notification, not Disclose the identified PHI to any health plan for the purposes of carrying out Payment or Health Care Operations, except as otherwise required by law. Business Associate shall not Disclose PHI to a health plan for payment or Health Care Operations purposes if and to the extent that Covered Entity has informed Business Associate that the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates, consistent with 42 U.S.C. § 17935(a) and 42 CFR § 164.522(a)(1)(vi). Covered Entity shall also notify Business Associate of any other restriction to the Use or Disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522.

6. **Remuneration and Marketing.**

a. Remuneration for PHI. Business Associate agrees that it shall not, directly or indirectly, receive remuneration in exchange for any PHI of Covered Entity except as otherwise permitted by the HITECH Act.

b. Limitations on Use of PHI for Marketing Purposes. Business Associate shall not Use or Disclose PHI for the purpose of making a communication about a product or service that encourages recipients of the communication to purchase or use the product or service. This Section 6.b. does not apply to a communication that complies with the requirements of paragraph (2) of the definition of marketing contained in 45 CFR § 164.501, and (2) complies with the requirements of subparagraphs (A), (B) or (C) of Section 13406(a)(2) of the HITECH Act, and implementing regulations or guidance that may be issued or amended from time to time. Covered Entity agrees to assist Business Associate in determining if the foregoing requirements are met with respect to any such marketing communication.

7. **Access to Records.**

a. Audits: Inspection and Enforcement. Within ten (10) days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the Use or Disclosure of PHI pursuant to this Agreement for the purpose of determining whether Business Associate has complied with this Agreement; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection; (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems, books, records, agreement, policies, and procedures does not relieve Business Associate of its responsibility to comply with this Agreement, nor does Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Business Associate or failure to require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practices or a waiver of Covered Entity's enforcement rights under this Agreement.

b. **Governmental Access to Records.** Business Associate shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary for purposes of determining Covered Entity's compliance with the HIPAA Regulations and the HITECH Act. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity of all requests served upon Business Associate for information or documentation by or on behalf of the Secretary. Business Associate shall provide to Covered Entity a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.

8. **Minimum Necessary.** To the extent required by the HITECH Act and 45 CFR § 164.502(b)(1) or any other guidance issued thereunder, Business Associate shall limit its Use, Disclosure or request of PHI to the Limited Data Set or, if needed, to the minimum necessary to accomplish the intended Use, Disclosure or request, respectively.

9. **Data Ownership.** Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.

10. **State Privacy Laws.** Business Associate shall comply with state laws to extent that such state privacy laws are not preempted by HIPAA or the HITECH Act.

11. **Termination.**

a. **Breach.** A breach or violation by Business Associate of any provision of this Agreement, as determined by Covered Entity, shall constitute a breach of the Underlying Agreement and shall provide grounds for immediate termination of the Underlying Agreement by Covered Entity.

b. **Breach by Business Associate.** If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligations under this Agreement, then Covered Entity shall promptly notify Business Associate. With respect to such breach or violation, Covered Entity shall (i) take reasonable steps to cure such breach or end such violation, if possible; or (ii) if such steps are either not possible or are unsuccessful, upon written notice to Business Associate, terminate its relationship with Business Associate.

c. **Breach by Covered Entity.** If Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity's obligations under this Agreement, then Business Associate shall promptly notify Covered Entity. With respect to such breach or violation, Business Associate shall (i) take reasonable steps to cure such breach or end such violation, if possible; or (ii) if such steps are either not possible or are unsuccessful, upon written notice to Covered Entity, terminate its relationship with Covered Entity.

d. **Effect of Termination.** Upon termination of this Agreement for any reason, Business Associate shall either return or destroy all PHI, as requested by Covered Entity, that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI. If Covered Entity requests that Business Associate return PHI, such PHI shall be returned in a mutually agreed upon format and timeframe, at no additional charge to Covered Entity. If return or destruction is not feasible, Business Associate shall (a) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities; (b) return to Covered Entity the remaining

PHI that the Business Associate still maintains in any form; (c) continue to extend the protections of this Agreement to such PHI so long as Business Associate retains the PHI; (d) limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible and subject to the same conditions set out in this Agreement, which applied prior to termination; and (e) return to Covered Entity the PHI 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. If Business Associate is asked to destroy the PHI, Business Associate shall destroy PHI in a manner that renders the PHI unusable, unreadable or indecipherable to unauthorized individuals as specified in the HITECH Act and shall certify in writing to Covered Entity that such PHI has been destroyed in compliance with such standards.

12. **Indemnification.** Business Associate hereby agrees to indemnify and hold harmless Covered Entity, its affiliates, and their respective officers, directors, shareholders, employees and agents from and against any and all liability, loss, fines, penalties, damage, claims or causes of action and expenses (including, without limitation, court costs and attorney's fees) caused directly or indirectly by Business Associate's breach of its obligation under this Agreement. Covered Entity may enforce Business Associate's obligations hereunder by seeking equitable relief, without bond, which remedy shall be nonexclusive.

13. **Amendment.** The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement any new or modified standards or requirements of HIPAA, the HIPAA Regulations, the HITECH Act and other applicable laws relating to the security or confidentiality of PHI. Upon the request of Covered Entity, Business Associate agrees to promptly enter into negotiation concerning the terms of an amendment to this Agreement incorporating any such changes. Covered Entity may terminate the Underlying Agreement and this Agreement upon ten (10) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend this Agreement when requested by Covered Entity pursuant to this Section or (ii) if Business Associate refuses to sign an amendment deemed necessary by Covered Entity to comply with such changed requirements within thirty (30) days of the commencement of such negotiations.

14. **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings commenced against Covered Entity, its directors, officers or employees based upon a claimed violation of HIPAA, the HIPAA Regulations, the HITECH Act or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is a named adverse party.

15. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

16. **Effect on Underlying Agreement.** In the event of any conflict between this Agreement and the Underlying Agreement, the terms of this Agreement shall control.

17. **Survival.** The provisions of this Agreement shall survive the termination or expiration of the Underlying Agreement.

18. **Interpretation.** This Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA Regulations and the HITECH Act. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with such laws.

19. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of California.

20. **Notices.** All notices required or permitted under this Agreement shall be in writing and sent to the other party as directed below or as otherwise directed by either party, from time to time, by written notice to the other. All such notices shall be deemed validly given upon receipt of such notice by certified mail, postage prepaid, facsimile transmission or personal or courier delivery:

If to Covered Entity: Community Health Group
740 Bay Boulevard
Chula Vista, California 91910
Attn: David J. Ritchie, Director of Contract Administration
Telephone no: (619) 498-6526
Facsimile no: (619) 476-3836

If to Business Associate: _____

Attn: _____
Telephone no: _____
Facsimile no: _____

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

BUSINESS ASSOCIATE:

COVERED ENTITY:

XXXX

COMMUNITY HEALTH GROUP

By: _____

By: _____

Name

Name

Title

Chief Executive Officer

Title

Date

Date