

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), effective _____, 202__ (“Effective Date”), is entered into by and between by and between NEW YORK HEALTH PURCHASING ALLIANCE, INC and the HEALTHPASS INSURANCE TRUST, (collectively, “Covered Entity”) both with offices located at 112 West 34th Street, 18th Floor, New York, New York 10120, and [Credentialed Agent]_____ (the “Business Associate”), with an address at _____ (each a “Party” and collectively the “Parties”).

WITNESSETH:

WHEREAS, the U.S. Department of Health and Human Services (“HHS”) has issued final regulations, pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), governing the privacy and security of individually identifiable health information obtained, created or maintained by certain entities, including health plans (the “HIPAA Privacy Rule” and the “HIPAA Security Rule”, respectively); and

WHEREAS, the HIPAA Privacy Rule requires that the Covered Entity enter into this Agreement with the Business Associate in order to protect the privacy of individually identifiable health information maintained by the Covered Entity and/or created or received by the Business Associate on behalf of the Covered Entity (“Protected Health Information,” or PHI”); and

WHEREAS, the Business Associate and its employees, affiliates, agents or representatives may access paper and/or electronic records containing PHI in carrying out their obligations to the Covered Entity pursuant to either an existing or contemporaneously executed agreement for brokerage services (“Credentialed Agent Agreement”); and

WHEREAS, the Parties desire to enter into this Agreement to protect PHI, and to amend any agreements between them, whether oral or written, with the execution of this Agreement;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and agreements contained herein the Parties agree as follows:

1. Business Associate Activities

1.1 Business Associate warrants that it, its agents and its subcontractors shall only use or disclose PHI in connection with fulfilling its duties and obligations under this Agreement and the Credentialed Agent Agreement. Business Associate may also use and disclose PHI as described by this Section 1.

1.2. Business Associate may use the PHI in its possession for its proper management and administration and/or to fulfill any present or future legal responsibilities of the Business Associate, provided that such uses are permitted under state and federal confidentiality laws.

1.3. Business Associate may disclose the PHI in its possession for the purpose of its proper management and administration and/or to fulfill any present or future legal responsibilities of the Business Associate. The Business Associate warrants and represents to the Covered Entity that unless such disclosure is required by law, (ii) the Business Associate will obtain reasonable written assurances from any person or entity to whom the PHI will be disclosed that the PHI will be held confidentially and used or further disclosed only as required and permitted under the HIPAA Privacy Rule and other applicable laws, and that such person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

1.4. Business Associate may aggregate the Covered Entity's PHI in the Business Associate's possession with the PHI of other covered entities that the Business Associate has in its possession through its capacity as a Business Associate to such other covered entities, provided that the purpose of such aggregation is to provide the Covered Entity with data analyses relating to its Health Care Operations, as such term is defined in the HIPAA Privacy Rule. The Business Associate will not disclose the PHI obtained from the Covered Entity to another covered entity absent written authorization from the Covered Entity.

1.5. Business Associate may de-identify any and all PHI provided that the de-identification conforms to the requirements of applicable law as provided for in 45 C.F.R. § 164.514(b) and that the Business Associate maintains such documentation as required by applicable law, as provided for in 45 C.F.R. § 164.514(b). The Parties understand that properly de-identified information is not PHI under the terms of this Agreement.

2. Business Associate Covenants

The Business Associate covenants to:

2.1. use or further disclose the minimum necessary PHI in performing the activities called for under the Credentialed Agent Agreement and/or under this Agreement;

2.2. not to use or further disclose PHI except as permitted under this Agreement, the HIPAA Privacy Rule and the HIPAA Security Rule, and applicable State law, each as amended from time to time;

2.3. use appropriate administrative, technical and physical safeguards to prevent the use or disclosure of PHI other than as provided for in this Agreement;

2.4. obtain and maintain, with any subcontractors or agents to whom it provides PHI received from, or created or received by the Business Associate on behalf of the Covered Entity, a written agreement, pursuant to which agreement such subcontractor and agent agrees to be bound by the same restrictions and conditions that apply to the Business Associate

with respect to such information;

2.5. comply with the Covered Entity policies and procedures with respect to access and use of the Covered Entity's equipment and facilities;

3. Business Associate Reporting Obligations

3.1 Breaches

3.1.1 In the event of a Breach of any Unsecured PHI that Business Associate accesses, maintains, retains, modifies, records, or otherwise holds or uses on behalf of Covered Entity, Business Associate shall report such Breach to Covered Entity as soon as practicable, but in no event later than five (5) business days after the date the Breach is discovered.

3.1.2 Notice of a Breach shall include, at a minimum: (i) the identification of each individual whose PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the Breach; (ii) the date of the Breach, if known, and the date of discovery of the Breach; (iii) the scope of the Breach; and (iv) the Business Associate's response to the Breach.

3.1.3 In the event of a Breach, Business Associate shall, in consultation with Covered Entity, mitigate, to the extent practicable, any harmful effect of such Breach known to Business Associate.

3.2 Improper Disclosures

3.2.1 Business Associate shall track all disclosures of Protected Health Information to third parties, including those made to subcontractors and agents, other than those disclosures that meet the exception criteria of 45 CFR Section 164.528.

3.2.2 In the event of any use or disclosure of PHI that is improper under this Agreement but does not constitute a Breach, Business Associate shall report such use or disclosure to Covered Entity within ten (10) business days after the date on which Business Associate becomes aware of such use or disclosure.

3.3 Security Incidents

3.3.1 In the event of any successful Security Incident, Business Associate shall report such Security Incident in writing to Covered Entity within three (3) business days of the date on which Business Associate becomes aware of such Security Incident.

3.3.2 As reasonably appropriate, Business Associate shall advise Covered Entity of measures Business Associate will be taking to mitigate harm from such Security Incident and to prevent similar future incidents.

4. Covered Entity Covenants

The Covered Entity covenants to notify the Business Associate of material limitations to the consents or authorizations as have been obtained by the Covered Entity from individuals and any other restrictions on the use or disclosure of PHI as agreed to by the Covered Entity.

5. Access to PHI

Within five (5) days of a request by the Covered Entity for access to PHI about an individual contained in a Designated Record Set, as such term is defined in the HIPAA Privacy Rule, the Business Associate shall make available to the Covered Entity, or, at the request of Covered Entity, the individual to whom such PHI relates or his or her authorized representative, such PHI for so long as such information is maintained in the Designated Record Set as defined in 45 C.F.R. § 164.524. In the event any individual requests access to PHI directly from the Business Associate, the Business Associate shall, within five (5) days, forward such request to the Covered Entity. Any denials of access to the PHI requested shall be the responsibility of the Covered Entity.

6. Amendment of PHI

Within ten (10) days of receipt of a request from the Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set, the Business Associate shall, as required by 45 C.F.R. § 164.526, incorporate any such amendments in the PHI; provided, however, that the Covered Entity has made the determination that the amendment(s) is/are necessary because the PHI that is the subject of the amendment(s) has been, or foreseeably could be, relied upon by the Business Associate or others to the detriment of the individual who is the subject of the PHI to be amended. The obligation in this Section 6 shall apply only for so long as the PHI is maintained by the Business Associate in a Designated Record Set.

7. Accounting for Disclosures of PHI

Within thirty (30) days of notice by the Covered Entity to the Business Associate that it has received a request for an accounting of disclosures of PHI regarding an individual, the Business Associate shall make available to the Covered Entity such information as is in the Business Associate's possession and is required for the Covered Entity to make the accounting required by 45 C.F.R. § 164.528. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within five (5) days, forward such request to the Covered Entity. It shall be the Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall implement an effective record keeping system to enable it to comply with this Section 7.

8. Access to Books and Records Regarding PHI

The Business Associate will make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate

on behalf of, the Covered Entity available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining the Covered Entity's or the Business Associate's compliance with applicable law.

9. Disposition of PHI Upon Termination

The Business Associate will, at termination or expiration of the Credentialed Agent Agreement, if feasible, return or destroy all PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity which the Business Associate and/or its subcontractors or agents still maintain in any form, and will not retain any copies of such information. If such return or destruction is not feasible, the Business Associate will notify the Covered Entity of such event in writing, and will thereupon extend the protections of this Agreement to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible.

10. Independent Contractor Relationship

No provision of this Agreement is intended to create, nor shall be deemed or construed to create, any employment, agency or joint venture relationship between the Covered Entity and the Business Associate other than that of independent entities contracting with each other hereunder solely for the purpose of effectuating the provisions of this Agreement. None of the Parties nor any of their respective representatives shall be construed to be the agent, employer, or representative of the other.

11. Term

This Agreement shall become effective on the Effective Date set forth above and shall terminate upon the termination or expiration of the Credentialed Agent Agreement and when all PHI provided by either party to the other, or created or received by Business Associate on behalf of Covered Entity is, in accordance with this Section, destroyed or returned to Covered Entity or, if Business Associate determines that it is not feasible to return or destroy PHI, protections are extended to such information, in accordance with the terms of this Agreement.

12. Termination

12.1. Termination by the Covered Entity. As provided for under 45 C.F.R. § 164.504(e)(2)(iii), the Covered Entity may immediately terminate this Agreement, any affected provision(s) of the Credentialed Agent Agreement or the Credentialed Agent Agreement in its entirety, and any related agreements if the Covered Entity makes the determination that the Business Associate has breached a material term of this Agreement. Alternatively, and in the sole discretion of the Covered Entity, the Covered Entity may choose to provide the Business Associate with written notice of the existence of the breach and provide the Business Associate with thirty (30) calendar days to cure said breach upon mutually agreeable terms. In the event that mutually agreeable terms cannot be reached within this thirty (30) day period, the Business Associate shall cure said breach to the satisfaction of the Covered Entity within an additional fifteen (15) days. In the

event that said breach is not cured, Covered Entity shall immediately terminate this Agreement and any affected provision(s) of the Credentialed Agent Agreement. 12.2. Termination by the Business Associate. If the Business Associate determines that the Covered Entity has breached a material term of this Agreement, then the Business Associate shall provide the Covered Entity with written notice of the existence of the breach and shall provide the Covered Entity with thirty (30) calendar days to cure said breach upon mutually agreeable terms. In the event that mutually agreeable terms cannot be reached within this (30) day period, the Covered Entity shall cure said breach to the satisfaction of the Business Associate within an additional fifteen (15) days. In the event that said breach is not cured, Business Associate shall immediately terminate this Agreement and any affected provision(s) of the Credentialed Agent Agreement. 13. Effect of Termination

Upon termination of this Agreement, the Business Associate agrees to return or destroy all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I), if it is feasible to do so. Prior to doing so, the Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. If it is not feasible for the Business Associate to return or destroy all PHI, the Business Associate will notify the Covered Entity in writing. Such notification shall include: (i) a statement that the Business Associate has determined that it is infeasible to return or destroy the PHI in its possession, and (ii) the specific reason for such determination. The Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to the Business Associate's use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. If it is infeasible for the Business Associate to obtain from a subcontractor or agent any PHI in the possession of the subcontractor or agent, the Business Associate must provide a written explanation to the Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

13. Amendments; Waiver

This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. The failure of either Party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or the right of either Party thereafter to enforce each and every such provision.

Notwithstanding the foregoing, this Agreement shall be deemed amended to comply with HIPAA in the event of a change in the law, regulation or interpretation, and the Parties agree that they shall negotiate and execute an amendment to this Agreement as soon as reasonably practicable following notification of such change in law.

14. 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 the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever. Nothing in this Agreement shall be construed to create any third party beneficiary rights in any person.

15. Attorney Client Privilege.

Nothing herein contained shall be construed to modify, impair or diminish either Party's attorney client privilege.

16. Notices

Any notice required or permitted under this Agreement shall be given in writing and delivered by hand, via a nationally recognized overnight delivery service (e.g., Federal Express), or via registered mail or certified mail, postage prepaid and return receipt requested, to the following:

Covered Entity:

New York Health Purchasing Alliance

112 West 34th Street, 18th Floor

New York, New York 10120

Attn: Privacy Official

Business Associate:

Attn: _____

Notice of a change in address of one of the Parties shall be given in writing to the other Party as provided above.

17. Interpretation

In the event of a dispute as to the meaning of any provision hereof, the Parties acknowledge and agree that it shall be interpreted so as to allow the Covered Entity to be in compliance with the requirements of HIPAA.

18. Conflicts

In the event of a conflict between this Agreement and the Credentialed Agent Agreement, the terms of this Agreement shall control.

19. Counterparts; Facsimiles

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

20. Disputes

If any controversy, dispute or claim arises between the Parties with respect to this Agreement, the Parties shall make good faith efforts to resolve such matters informally.

21. Indemnification

Business Associate shall indemnify, defend and hold harmless Covered Entity and its directors, officers, subcontractors, employees, affiliates, agents, and representatives from and against any and all third party liabilities, costs, claims, suits, actions, proceedings, demands, losses and liabilities of any kind (including court costs and reasonable attorneys' fees) brought by a third party, arising from or relating to the acts or omissions of Business Associate or any of its directors, officers, subcontractors, employees, affiliates, agents, and representatives in connection with the Business Associate's performance under this Agreement, without regard to any limitation or exclusion of damages provision otherwise set forth in the Agreement. The indemnification provisions of this Section shall survive the termination of this Agreement.

INTENDING TO BE LEGALLY BOUND, the Parties hereto have duly executed this Agreement as of the Effective Date.

(Credentialed Agent)

Name: _____

By _____
(Title)

SSN/TIN: _____

Date: _____

NEW YORK HEALTH PURCHASING ALLIANCE INC.

By _____
Vincent C. Ashton, President & CEO

Date: _____

HEALTHPASS INSURANCE TRUST

By _____
Vincent C. Ashton, Trustee

Date: _____