

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is by and between WellChoice Inc. (“WellChoice”) and the undersigned broker (“Broker”).

WHEREAS, WellChoice has determined that Broker performs certain functions or services for WellChoice involving the creation, use, transmission or disclosure of Protected Health Information and Electronic PHI as those terms are defined under the Administrative Simplifications subtitle of the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. Parts 160, 162 and 164) (“HIPAA”, the “Privacy Rule and Security Rule”); and

WHEREAS, WellChoice and Broker mutually agree to enter into this Agreement to comply with the requirements of HIPAA. For purposes of this Agreement, WellChoice shall be considered a “Covered Entity” and Broker shall be considered a “Business Associate”, as these terms are defined below.

For purposes of this Agreement, WellChoice shall include a corporation which directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with WellChoice, Inc. and specifically includes Empire HealthChoice Assurance, Inc., d/b/a Empire Blue Cross Blue Shield, and empire HealthChoice HMO, Inc., d/b/a Empire BlueCross Blue Shield HMO.

For purpose of this Agreement, the term Broker in certain instances as reasonably determined by WellChoice shall include any duly individual licensees and licensed brokers who are represented or held out to be employees, agents or affiliates of the Broker.

NOW, THEREFORE, the parties agree as follows:

HIPAA PRIVACY AND SECURITY REQUIREMENTS

A. Definitions:

- (i) The “Privacy Rule” and the ”Security Rule” shall mean the HIPAA regulations governing individually identifiable health information codified at 45 C.F.R. Parts 160, 162 and 164.
- (ii) “Administrative safeguards” shall mean administrative actions, and policies and procedures, to manage the selection development, implementation, and maintenance of security measures to protect electronic protected health information and to manage the conduct of the covered entity's workforce in relation to the protection of that information (45 C.F.R. § 164.304).
- (iii) “Availability” shall mean the property that data or information is accessible and useable upon demand by an authorized person (45 C.F.R. § 164.304).
- (iv) “Business Associate”, with respect to a covered entity, shall include a person (vendor, consultant) who:

- (a) On behalf of such covered entity, but other than in the capacity of a member of the workforce of such covered entity or arrangement, performs, or assists in the performance of a function or activity involving the use or disclosure of individually identifiable health information (such as, subscriber name, ID, home address, email address, SS#, DOB, phone#, diagnosis or procedure code, and dates of service), including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and repricing; or
- (b) Provides, other than in the capacity of a member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation (as defined in 164.501 of the Privacy Rule), management, administrative, accreditation, or financial services to or for such covered entity. 45 C.F.R. § 160.103
- (v) “Confidentiality” shall mean the property that data or information is not made available or disclosed to unauthorized persons or processes (45 C.F.R. § 164.304).
- (vi) “Covered Entity” shall have the meaning given to such term in 45 C.F.R. § 160.103.
- (vii) "Individual" shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g). (45 C.F.R. § 160.103)
- (viii) “Integrity” shall mean the property that data or information have not been altered or destroyed in an unauthorized manner (45 C.F.R. § 164.304).
- (ix) “Physical safeguards” shall mean physical measures, policies, and procedures to protect a covered entity's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion (45 C.F.R. § 164.304).
- (x) “Protected Health Information” and “Electronic Protected Health Information” (together referred to as “PHI”) shall have the meaning given to such terms in 45 C.F.R. § 160.103, created, maintained, transmitted or received by Broker for or on behalf of WellChoice.
- (xi) “Security incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system (45 C.F.R. § 164.304).
- (xii) “Technical safeguards” shall mean the technology and the policy and procedures for its use that protect electronic protected health information and control access to it (45 C.F.R. § 164.304).

- B.** Obligations of Broker under the Privacy Rule and Security Rule. Pursuant to this Agreement or in connection with Broker's agreement(s) with WellChoice, WellChoice may be required to disclose certain PHI to Broker, and Broker may receive such PHI or create PHI on WellChoice's behalf in connection with its obligations under this Agreement. Broker shall use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, security and availability of PHI that it creates, receives, maintains, or transmits on behalf of WellChoice. Broker may use and disclose PHI created or received pursuant to this Agreement only as follows:
- (i). To Carry Out the Purposes of this Agreement. Broker may use, maintain, transmit and disclose PHI received from WellChoice or created on behalf of WellChoice to perform its obligations under this Agreement or in connection with Broker's agreement(s) with WellChoice, solely in accordance with the specifications set forth in this Agreement or as required by law.
 - (ii). Specific Use and Disclosure
 - (a). Except as otherwise limited in this Agreement or in Broker's agreement(s) with WellChoice, Broker may use PHI for the proper management and administration of the Broker or to carry out the legal responsibilities of the Broker.
 - (b). Except as otherwise limited in this Agreement or in Broker's agreement(s) with WellChoice, Broker may disclose PHI for the proper management and administration of the Broker, provided that disclosures are required by law, or Broker obtains reasonable written assurances from the person to whom the information is disclosed that it will remain confidential 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 notifies the Broker of any instances of which it is aware in which the confidentiality or security of the information has been breached.
 - (c). Except as otherwise limited in this Agreement or in Broker's agreement(s) with WellChoice, Broker may use PHI to provide Data Aggregation services to WellChoice as permitted by 42 CFR 164.504(e)(2)(i)(B).
 - (iii). Nondisclosure. Broker shall not use or further disclose the PHI received from or created on behalf of WellChoice in a manner that would violate the requirements of the Privacy Rule and Security Rule (including the minimum necessary requirements), if done by WellChoice or any covered entity that WellChoice serves in the capacity of a business associate.
 - (iv). Safeguards. Broker shall develop, implement, maintain and use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, security and availability of PHI that it creates, receives, uses, maintains, or transmits on behalf of WellChoice, to prevent use or disclosure of the PHI other than as provided for under this Agreement, including adopting policies and procedures regarding the safeguarding of PHI, including a security plan that takes into account each of the Security Rule standards, as

- appropriate; and providing training, as appropriate, to relevant employees, independent contractors and subcontractors on such policies and procedures to prevent the improper use or disclosure of PHI..
- (v). Reporting Improper Disclosures. Broker shall report in writing to WellChoice any use or disclosure or any security incident or any suspected security incident of the PHI not provided for under this Agreement, including the facts surrounding the incident or suspected incident, a detailed description of the PHI, including an exact copy or exact replication of the PHI, as appropriate, in a format reasonably requested by WellChoice, of which Broker becomes aware, promptly but in no event later than five (5) Business Days of first learning of any such use or disclosure or incident.
 - (vi). Mitigation. Broker agrees to mitigate to the extent practicable, any harmful effect that is known to Broker of a use or disclosure or incident of PHI by Broker in violation of the requirements of this Agreement.
 - (vii). Use of Agents and Subcontractors. Broker shall ensure that any Subcontractors or agents to whom Broker provides PHI created or received pursuant to this Agreement agree in writing to the same restrictions and conditions, including implementing reasonable and appropriate safeguards to protect PHI, as set forth in this Agreement, that apply to Broker with respect to such PHI.
 - (viii). Availability of Information to WellChoice. Within ten (10) Business Days of receipt of a request from WellChoice, Broker shall, in accordance with such WellChoice request, make PHI available to WellChoice, provide WellChoice access to PHI, and/or make a copy of PHI available to WellChoice, all in accordance with 45 C.F.R. § 164.524. If an individual requests PHI directly from Broker, Broker shall not give the individual access to the PHI unless access is approved by WellChoice. WellChoice shall have full discretion to determine whether the individual shall be given access. If Broker receives, directly or indirectly, a request from an individual requesting PHI, Broker shall notify WellChoice in writing promptly after and of such individual's request for PHI no later than ten (10) business days of receiving such request.
 - (ix). Amendment of PHI. Within ten (10) business days of a request from WellChoice, Broker shall make WellChoice's PHI available to WellChoice as it may request to fulfill its obligations to amend such PHI pursuant to 45 C.F.R. § 164.526. Broker shall incorporate any amendments to WellChoice's PHI into any and all PHI Broker maintains. If the individual requests an amendment to PHI directly from Broker, Broker shall not amend the PHI unless directed by WellChoice. WellChoice shall have full discretion to determine whether the amendment shall occur. If Broker receives, directly or indirectly, a request from an individual requesting an amendment to PHI, Broker shall notify WellChoice in writing promptly after and of such individual's request for an amendment to PHI no later than ten (10) business days of receiving such request.
 - (x). Accounting of PHI. Within ten (10) business days of notice by WellChoice of a request for an accounting of disclosures of PHI by Broker or its subcontractors, Broker shall make available the account of such disclosures to WellChoice as requested for WellChoice to fulfill its obligations to provide an accounting pursuant to 45 C.F.R. § 164.528. Broker shall implement a process that allows

for such an accounting. If the individual requests an accounting of disclosures of PHI directly from Broker, Broker shall not provide the individual the account of such disclosures unless directed by WellChoice. WellChoice shall have full discretion to determine whether the individual shall be given such accounting. If Broker receives, directly or indirectly, a request from an individual requesting an accounting of PHI, Broker notify WellChoice in writing promptly after and of such individual's request for an accounting of disclosures of PHI no later than ten (10) business days of receiving such request.

- (xi). Availability of Books and Records. Broker shall make its internal practices, books, and records relating to the use and disclosure of PHI received or created pursuant to this Agreement available to the Secretary of Health and Human Services for purposes of determining WellChoice's (or any covered entities that WellChoice services) compliance with the Privacy Rule and Security Rule.
- (xii). Record Retention. Broker shall retain all PHI received from WellChoice, or created or received in the course of performing its obligations under this Agreement, for the duration of the term of this Agreement, or in accordance with law, whichever is longer, unless otherwise directed by WellChoice.
- (xiii). Minimum Necessary Amount of PHI. Broker shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purposes of the request, use or disclosure.
- (xiv). Audits and Inspection. Notwithstanding any provision set forth in this Agreement to the contrary, if WellChoice, in good faith, believes that Broker has breached any provision of this Agreement, then upon providing five (5) business days' written notice, WellChoice may inspect Broker's 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 Broker has complied with this Agreement.

C. Obligations of WellChoice under the Privacy Rule and the Security Rule.

- (i) WellChoice shall notify Broker of any limitation(s) in its notice of privacy practices of WellChoice in accordance with 45 CFR §164.520, to the extent that such limitation may affect Broker's use or disclosure of PHI, and Broker shall abide by any such limitations.
- (ii) WellChoice shall notify Broker of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect Broker's use or disclosure of PHI, and Broker shall abide by any such changes or revocations.
- (iii) WellChoice shall notify Broker of any restriction to the use or disclosure of PHI that WellChoice has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect vendor's use or disclosure of PHI, and Broker shall abide by any such restrictions.

- (iv) WellChoice shall not request Broker to use or disclosure PHI in any manner that would not be permissible under the Privacy Rule if done by WellChoice, except that the Broker may use or disclose PHI as permitted by the contract, for data aggregation or management and administrative activities of Broker.

D. Termination.

- (i). Upon termination of this Agreement for any reason, Broker shall return and/or destroy all PHI received or created pursuant to this Agreement that Broker maintains in any form, and shall retain no copies of such PHI; or, if return or destruction is not feasible, Broker shall notify WellChoice in writing and continue to extend protections of this Agreement to such information, and shall certify to WellChoice in writing that it will limit further use or disclosure of such PHI to those purposes that make the return or destruction infeasible, for so long as Broker maintains such PHI. Upon either the return of PHI to WellChoice or the destruction of all PHI by Broker, Broker shall certify to WellChoice in writing its return to WellChoice or destruction of all such PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Broker.
- (ii). Subject to (iii), WellChoice may terminate this Agreement, if Broker violates a material term of this Agreement.
- (iii). Cure. Upon WellChoice's knowledge of a material breach by Broker of this Agreement, Broker shall have the opportunity to cure such violation, as set forth in the Agreement, or if there is no such provision to cure, then within thirty (30) days of notice by WellChoice to Broker of such violation. If such violation is not cured within the time period set forth in this Agreement, WellChoice may declare a material breach of the Agreement and terminate the Agreement or, if not feasible to terminate the Agreement, report the problem to the Secretary of U.S. Health and Human Services, as set forth in 45 C.F.R. § 164.504(e)(1)(ii)(B).

E. Indemnity. Broker will indemnify and hold harmless WellChoice and any WellChoice affiliate, officer, director, employee or agent from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted or violating use or disclosure of PHI or other breach of this Agreement by Broker or any subcontractor, agent, person or entity under Broker's control.

F. Modifications to Privacy Rule. Upon the compliance date of any modification to the Privacy Rule or the Security Rule or upon the compliance date of any final law or regulation or amendment to a final law or regulation impacting this Agreement and Broker's use or disclosure of PHI, this Agreement will automatically amend such that the obligations imposed on Broker remain in compliance with any such modification, final law or regulation or amendment to final law or regulation.

G. Interpretation of this Agreement. Any ambiguity in the terms set forth in this Agreement shall be construed to permit WellChoice's full compliance with the Privacy Rule and the Security Rule.

H. Conflicts. The terms and conditions of this Agreement will override and control any conflicting term or condition of any other agreements between Broker and WellChoice.

IN WITNESS WHEREOF, WellChoice and Broker execute this Agreement in multiple originals to be effective on the last date written below.

INDIVIDUAL

WellChoice, Inc.

By: Signature: _____

Print Name: _____

Date of Birth _____ / _____ / _____

Telephone Number: (_____) _____ - _____

Fax Number: (_____) _____ - _____

S.S. Number: _____ - _____ - _____

License Number: _____ - _____

Date Signed: _____ / _____ / _____

E-mail Address: _____

By: Signature: _____

Print Name: _____

Title: _____

Date Signed: _____ / _____ / _____

OR

CORPORATE BROKER/CORPORATE BROKERAGE AGENCY

Corporate Name: _____

By: Signature: _____

Print Name: _____

Title: _____

Telephone Number: (_____) _____ - _____

Fax Number: (_____) _____ - _____

Federal ID Number: _____ - _____

License Number: _____ - _____

Date Signed: _____ / _____ / _____

E-mail Address: _____