

## CONTRACTOR'S CHOICE

### BUSINESS ASSOCIATE PRIVACY AGREEMENT

This Business Associate Privacy Agreement (this "Agreement"), effective April 1, 2003, is entered into by and between Contractor's Choice (and its Affiliates, as defined herein) (collectively, the "Company") and the entity identified on the signatory page ("Broker Business Associate"), which party for the purpose of this Agreement is a Business Associate (as defined herein) of the Company, (collectively, the "Parties"). This Agreement is drafted for the express purpose of complying with the privacy requirements of the California Insurance Information and Privacy Protection Act (CIC 791 et seq., "IIPPA"), the Gramm-Leach-Bliley Act (15 U.S.C. §§ 1501 et seq., the "GLBA") and regulations adopted by the California Department of Insurance to implement IIPPA and the GLBA (10 C.C.R. §§2689.1 et seq., the "IIPPA Privacy Regulations"), the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and regulations adopted by the U.S. Department of Health and Human Services to implement HIPAA (45 CFR Parts 160-64, the "HIPAA Privacy Regulations") to ensure the integrity and confidentiality of individually identifiable personal and health information that Broker Business Associate may collect, create for or receive from the Company (collectively, the "Privacy Rule"). Additional terms and conditions in accordance with local privacy ordinances shall be set forth in an Addendum. The term "Privacy Rule" also includes local privacy ordinances

#### A. Definitions.

1. **"Affiliate" or "Affiliated"** means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.
2. **"Business Associate"** means an individual or entity that performs a function or activity on behalf of, or provides a service to a Covered Entity (as defined herein) or another Business Associate of a Covered Entity, that involves the collection, creation, use or disclosure of Personal and Health Information. The Company is a Business Associate of the Health Plan, a Covered Entity, and Broker Business Associate is a Business Associate of the Company.
3. **"Broker Business Associate"** means, for the purposes of this Agreement, an individual (e.g., a licensed agent, broker) or entity that performs a function or activity on behalf of, or provides a service to a Business Associate of a Covered Entity, that involves the collection, creation, use or disclosure of Personal and Health Information
4. **"Covered Entity"** means a health plan, health care clearinghouse or a health care provider who transmits any health information in electronic form in connection with a transaction covered under the HIPAA Privacy Regulations.
5. **"De-Identify" or "De-Identification"** means Health Information that does not identify an individual and with respect to which there is no reasonable basis to believe that such information can be used to identify an individual
6. **"Designated Record Set"** means a group of records maintained by or for a Covered Entity comprising the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a Covered Entity or Business Associate of the Covered Entity or used, in whole or in part, by or for the Covered Entity to make decisions about individuals. For purposes of this Section, the term "record" includes any item, collection, or grouping of information that contains Personal and Health Information and is maintained, collected, used, or disseminated by or for a Covered Entity or the Company.
7. **"Limited Data Set"** means protected Health Information that excludes the following direct identifiers of the individuals or of relatives, employers or household members of the individual: (i) names; (ii) postal address information, other than town or city, State and zip code; (iii) telephone numbers; (iv) fax numbers; (v) electronic mail addresses; (vi) social security numbers; (vii) medical record numbers; (viii) health plan beneficiary numbers; (ix) account numbers; (x) certificate/license numbers; (xi) vehicle identifiers and serial numbers, including license plate numbers; (xii) device identifiers and serial numbers; (xiii) Web Universal Resource Locators (URLs); (xiv) Internet Protocol (IP) address numbers; (xv) biometric identifiers, including finger and voice prints; and (xvi) full face photographic images and any comparable images.
8. **"Personal and Health Information"** means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health or any other personal characteristics. Individually identifiable information includes the individual's name, address, electronic mail address, telephone number, social security number and other information, alone or in combination with other publicly available information, which reveals the individual's identity. Personal information includes the individual's nonpublic personal financial

information. Health information means “Protected Health Information” as this term is defined under the HIPAA Privacy Regulations, and includes any information in possession of or derived from a physician or other provider of healthcare or a health care service plan regarding an individual’s medical history, mental or physical condition or treatment.

## **B. Privacy of Personal and Health Information.**

1. **Permitted Uses and Disclosures.** Broker Business Associate is permitted or required to use or disclose Personal and Health Information it collects, creates for or receives from the Company only as follows:
  - i. **Functions and Activities on the Company’s Behalf.** Broker Business Associate is permitted to use and disclose the minimum necessary Personal and Health Information it collects, creates for or receives from the Company in order to provide services to individuals.
  - ii. **Broker Business Associate’s Operations.** Broker Business Associate may use and disclose the minimum necessary Personal and Health Information it collects, creates for or receives from the Company as necessary in order to perform Broker Business Associate’s proper management and administration, or to carry out Broker Business Associate’s legal responsibilities. If Broker Business Associate discloses such Personal and Health Information to an agent, a subcontractor or other third party, then Broker Business Associate shall obtain reasonable assurances from the agent, subcontractor or other third party to which Broker Business Associate discloses such Personal and Health Information that agent, subcontractor or other third party shall: (i) hold such Personal and Health Information in confidence and use or further disclose it only for the purposes for which Broker Business Associate disclosed it to the agent, subcontractor or other third party or as required by law; and (ii) notify Broker Business Associate (who shall in turn promptly notify the Company) of any instances of which the agent, subcontractor or other third party becomes aware that the confidentiality of such Personal and Health Information was breached.
2. **Prohibition on Unauthorized Use or Disclosure.** Broker Business Associate shall neither use nor disclose Personal and Health Information it collects, creates for or receives from the Company, except as permitted or required by this Agreement, or as permitted or required by law.
3. **Compliance with the Company’s Confidentiality/Privacy Policies.** Broker Business Associate shall comply with the Company’s Confidentiality/Privacy Policies
4. **Compliance with Laws; Regulatory Amendments.** Broker Business Associate shall comply with the Privacy Rule and all applicable state laws and federal laws not preempted pursuant to the Privacy Rule. In addition, the Parties agree to take such action as is necessary to amend this Agreement from time to time in order for the Parties to comply with the requirements of the Privacy Rule.
5. **De-Identification of Information/Creation of Limited Data Set.** Broker Business Associate shall not De-Identify Protected Health Information it creates or receives for or from the Company, and shall not use or disclose such de-identified information, unless such de-identification is expressly permitted under the terms and conditions of this Agreement for services to be provided by Broker Business Associate to the Company related to the Company’s activities for purposes of “treatment,” “payment” or “health care operations,” as those terms are defined under the HIPAA Privacy Regulations. Broker Business Associate further agrees that it will not create a Limited Data Set using Protected Health Information it creates or receives for or from the Company, nor use or disclose such Limited Data Set unless:(i) such creation, use or disclosure is expressly permitted under the terms and conditions of this Agreement; and (ii) such creation, use or disclosure is for services provided by Broker Business Associate that relate to the Company’s activities for purposes of “payment” or “health care operations,” as those terms are defined under the HIPAA Privacy Regulations.
6. **Information Safeguards.** Broker Business Associate shall develop, implement, maintain and use appropriate administrative, technical and physical safeguards, in compliance with applicable state and federal laws, to preserve the confidentiality of and to prevent unauthorized disclosures of Personal and Health Information collected, created or received for or from the Company. Broker Business Associate shall document and keep such safeguards current and, upon the Company’s reasonable request, shall provide the Company with a copy of policies and procedures related to such safeguards.

## **C. Personal and Health Information Access, Amendment and Disclosures.**

1. **Access.** Broker Business Associate shall, upon the Company’s reasonable request permit, within ten (10) business days of receipt of request, an individual (or the individual’s personal representative) to inspect and obtain copies of

any Personal and Health Information about the individual which Broker Business Associate collected, created or received for or from the Company and that is in Broker Business Associate's custody or control.

2. **Amendment.** Broker Business Associate shall, upon receipt of notice from the Company, promptly amend or permit the Company access to amend any portion of an individual's Personal and Health Information which Broker Business Associate collected, created or received for or from the Company and that is in Broker Business Associate's custody or control.
3. **Disclosures.** Broker Business Associate shall document each disclosure it makes of an individual's Personal and Health Information to a third party. More over, for purposes of this Section, "disclosure" includes: 1) any legal disclosure; 2) any illegal, inadvertent, wrongful, or negligent disclosure; and 3) any instance in which access was provided to an unauthorized third party to an individual's Personal and Health Information. For the purposes of this Agreement, "legal disclosure" includes, but is not limited, any disclosures to law enforcement or other governmental authority pursuant to law and in response to a facially valid administrative or judicial order, such as a search warrant or subpoena.
4. **Disclosure Reporting.**
  - i. **Legal.** On the last day of each month, Broker Business Associates shall forward to the Company a report of such disclosures, as required by 45 CFR §164.528; however, this requirement shall not apply if Broker Business Associate has not made any such disclosures during the month. Such report shall include the applicable individual's name, the person to whom the Personal and Health Information was disclosed, what was disclosed, why the information was disclosed, and the date of such disclosure.
  - ii. **Illegal, Inadvertent or Wrongful Disclosure.** Broker Business Associate shall report to the Company any use or disclosure of Personal and Health Information not permitted by this Agreement or in violation of the Privacy Rule. Business Associate shall make the report to the Company not more than twenty-four (24) hours after Broker Business Associate learns of such non-permitted use or disclosure. Broker Business Associate shall report such disclosure in accordance with Section D of this Agreement.
  - iii. **Termination of Agreement.** Upon termination of this or any of the Company's Agreement, Broker Business Associate shall provide to the Company one final report of any and all disclosures made of all individuals' Personal and Health Information.
5. **Inspection of Books and Records.** Broker Business Associate shall make its internal practices, books and records, relating to its use and disclosure of the Personal and Health Information it collects, creates or receives for or from the Company, available to the U.S. Department of Health and Human Services or to the California Insurance Commission to determine the Company's compliance, as a Business Associate, with the provisions of the HIPAA Privacy Regulations or the IIPPA Privacy Regulations, whichever is applicable.
6. **Designated Record Set.** Broker Business Associate agrees that all Personal and Health Information received by or created for the Company shall be included in an individual's Designated Record Set. Broker Business Associate shall maintain such Designated Record Set with respect to services provided to an individual under this Agreement, and shall allow such individual to access the Designated Record Set as provided in the HIPAA Privacy Regulations.

#### **D. Breach of Privacy Obligations.**

1. **Breach.** In furtherance of Broker Business Associate's obligation under Sections C.3. and C.4 above, Broker Business Associate shall report to the Company any use or disclosure of Personal and Health Information not permitted by this Agreement. Broker Business Associate's report shall contain, at a minimum, the following Information:
  - i. The nature of the non-permitted use or disclosure;
  - ii. The Personal and Health Information used or disclosed;
  - iii. The name of the person who made the non-permitted use or received the non-permitted disclosure;
  - iv. The corrective actions Broker Business Associate took or shall take to prevent further non-permitted uses or disclosures;

- v. The actions Broker Business Associate took or shall take to mitigate any deleterious effect of the non-permitted use or disclosure; and
  - vi. Any such other information, including a written report, as the Company may reasonably request.
2. **Termination of Agreement.** The Company may, in addition to other available remedies terminate this Agreement if Business Associate has materially breached any provision(s) of this Agreement and has failed to cure or take any actions to cure such material breach within five (5) calendar days of the Company informing Broker Business Associate of such material breach. The Company shall exercise this right to terminate any other agreements by providing Broker Business Associate written notice of termination, which termination shall include the reason for the termination. Any such termination shall be effective immediately or at such other date specified in the Company's notice of termination.
- i. **Obligations upon Termination.** Upon termination, cancellation, expiration or other conclusion of this Agreement or any other agreements for any reason, Broker Business Associate shall comply with applicable Privacy Rule requirements regarding the return or destruction of Personal and Health Information.
  - ii. **Continuing Privacy Obligation.** Broker Business Associate's obligation to protect the privacy of the Personal and Health Information shall be continuous and survive termination, cancellation, expiration or other conclusion of this Agreement.

#### **E. General Provisions**

- 1. **Injunctive Relief.** In the event that Broker Business Associate breaches any material term of this Agreement, Broker Business Associate agrees that the Company has a right to obtain injunctive relief to prevent further disclosure of such Personal and Health Information. In addition to injunctive relief, the Company may also pursue any other remedy under applicable law or equity available to it.
- 2. **Independent Relationship.** None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other as independent contractors solely for the purposes of effecting the provisions of this Agreement.
- 3. **Rights of Third Parties.** This Agreement is between the Company and Broker Business Associate and shall not be construed, interpreted, or deemed to confer any rights whatsoever to any third party or parties.
- 4. **Assignment.** Broker Business Associate may not assign its respective rights and obligations under this Agreement without the prior written consent of the Company.
- 5. **Indemnification and Hold Harmless.** Broker Business Associate shall indemnify and hold harmless the Company, and the Company's officers, directors, employees and agents 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 use or disclosure of Personal and Health Information or other breach of this Agreement by Broker Business Associate or any Business Associate subcontractor, agent, representative, person or entity. This Section E.5. shall survive the termination of this Agreement.
- 6. **Waiver.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation on any other occasion.
- 7. **Assistance in Litigation or Administrative Proceedings.** Broker Business Associate shall make itself, and any subcontractors, employees or agents assisting Broker Business Associate in the performance of its obligations under his Agreement, available to the Company, at no cost to the Company, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Company, its directors, officers or employees based upon a claimed violation of any of the provisions of the Privacy Rule or other laws relating to security and privacy, except where Broker Business Associate or its subcontractor, employee or agent is a named adverse party.
- 8. **Expenses.** Unless otherwise stated in this Agreement, each party shall bear its own costs and expenses related to compliance with the above provisions.


9. **Governing Law.** The laws of the United States and the State of California shall govern the interpretation, validity, performance and enforcement of this Agreement. Jurisdiction and venue for any action under this Agreement shall be in the Superior Court for the County of Orange County *in* the State of California.
10. **Headings.** The headings of paragraphs contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
11. **Interpretation.** The Parties agree that any ambiguity in this Agreement will be resolved in favor of an interpretation that protects the Personal and Health Information and facilitates Broker Business Associate's and the Company's compliance with applicable terms and requirements of the Privacy Rule.
12. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and supersedes and replaces any and all prior written or verbal privacy agreements. If any provision of this Agreement conflicts with any of the provisions of the Privacy Rule and other applicable law, the said Privacy Rule or applicable law, to the extent of such conflict, shall control. The Company's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct nor trade practice between the Parties shall act to modify any provision of this Agreement.
13. **Conflicts.** In the event that Broker Business Associate has entered into one or more agreement with the Company other than this Agreement, the terms and conditions of this Agreement shall prevail if this Agreement conflicts with any provision of any other of the Company's agreements.
14. **Severability.** In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.
15. **Notices.** All notices and notifications under this Agreement shall be sent in writing to the representatives of the Company and Broker Business Associate identified below, signed by the party providing the notice or notification.

For any notification required by or provided pursuant to this Agreement, notice should be sent to:

Privacy Office  
 Contractor's Choice  
 721 S. Parker, Suite 200  
 Orange, CA 92868

IN WITNESS WHEREOF, the Company and Broker Business Associate execute this Agreement in multiple originals to be effective as of the day and year written below:

**Contractor's Choice:**

  
 \_\_\_\_\_  
 By: John M. Word III

Title: President

Date: March 10, 2003

**Broker Business Associate:**

\_\_\_\_\_  
 Calif. Dept. of Ins. License No.

\_\_\_\_\_  
 Daytime Phone No.

\_\_\_\_\_  
 Signature

Date: \_\_\_\_\_, 20\_\_