

Business Associate Agreement

This HIPAA Business Associate Agreement ("Agreement") is hereby made and entered into this 1 day of July, 2019 ("Effective Date"), by and between City of Franklin ("Covered Entity") and Willis Towers Watson US LLC on behalf of itself and its affiliates ("Business Associate") (each a "Party" and collectively, the "Parties").

WHEREAS, Covered Entity and Business Associate have entered into one or more underlying services agreement(s) (the "Underlying Services Agreements") pursuant to which Business Associate performs consulting services under which we receive Protected Health Information;

WHEREAS, Business Associate acknowledges and agrees that it may be a Business Associate, and Covered Entity acknowledges that it may be a Covered Entity (or a plan sponsor or business associate acting on behalf of a covered entity) as those terms are defined under the Health Insurance Portability and Accountability Act of 1996, and its implementing regulations at 45 C.F.R. Parts 160 -164, all as amended, including by HITECH (as defined below in Section 1.c.) (collectively, "HIPAA"), and in this case, specifically in 45 C.F.R. § 160.103;

WHEREAS, Covered Entity and Business Associate mutually desire to outline their individual responsibilities with respect to the use and/or disclosure, safeguarding, and transmission of Protected Health Information ("PHI") and electronic Protected Health Information ("ePHI"), as mandated by HIPAA;

WHEREAS, Covered Entity and Business Associate understand and agree that the Security Rule and Privacy Rule require that a Covered Entity and Business Associate enter into this Agreement, as required by 45 C.F.R. § 164.314(a) and 45 C.F.R. § 164.504(e), respectively, and that this Agreement is intended to satisfy these obligations and will govern the terms and conditions under which such PHI and/or ePHI may be used and/or disclosed and safeguarded by Business Associate;

WHEREAS, the Parties desire to amend the Underlying Services Agreements by adding this Agreement containing the terms and conditions under which Business Associate may use the Protected Health Information;

NOW, THEREFORE, Covered Entity and Business Associate hereto agree to the foregoing and as follows:

1. Definitions

Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R. Parts 160 -164 and HITECH, as applicable.

- a. Compliance Date shall mean, in each case, the date by which compliance is required under the referenced provision of HITECH.
- b. Electronic Protected Health Information or ePHI. "Electronic Protected Health Information" or "ePHI" shall have the same meaning as the term "electronic protected health information" in 45 C.F.R. §160.103 and includes Protected Health Information transmitted by, or maintained in, electronic media.
- c. HITECH shall mean the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, Pub. Law No. 111-5 and its implementing regulations. References in this Agreement to a section or subsection of title 42 of the United States Code are references to provisions of HITECH, and any reference to provisions of HITECH in this Agreement shall be deemed a reference to that provision and its existing and future implementing regulations, when and as each is effective.

- d. Individual. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- e. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, subparts A and E.
- f. Protected Health Information or PHI. "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- g. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- h. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- i. Security Rule. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 160 and Part 164, subpart C.

2. Obligations and Activities of Business Associate

- a. Business Associate agrees to use or disclose Protected Health Information only as permitted or required by this Agreement or as Required By Law and in compliance with each applicable requirement of 45 C.F.R. § 164.504(e). Without limiting the generality of the foregoing sentence, to the extent Business Associate is to carry out Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of those obligations.
- b. Business Associate agrees to (i) implement and use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement; (ii) reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it creates, maintains, or transmits on behalf of the Covered Entity; and (iii) as of the Compliance Date of 42 U.S.C. § 17931, comply with the Security Rule.
- c. Business Associate agrees to use reasonable efforts to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- d. Business Associate agrees to report to Covered Entity (i) any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware; (ii) any Security Incident affecting Protected Health Information of which it becomes aware, and (iii) without unreasonable delay and in no case later than sixty (60) calendar days after discovery, any Breach of any Unsecured PHI in accordance with the security breach notification requirements set forth in 42 U.S.C. § 17932 as of its Compliance Date, including at 45 C.F.R. § 164.410. As such, Business Associate shall provide the following information to the Covered Entity: (1) a brief description of what happened, including the date of the breach and the date of discovery of the breach, if known; (2) a description of the types of Unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code) and who received the Unsecured PHI; (3) the steps Individuals should take to protect themselves from potential harm resulting from the Breach; (4) a brief description of what the Business Associate is doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and (5) any information reasonably available regarding the Breach that the Covered Entity may need to include in its notification to the affected individuals, the media

and/or the Secretary as required by 42 U.S.C. §17932 and 45 C.F.R. §§ 164.404, 164.406, 164.408. The Business Associate shall also cooperate with the Covered Entity to conduct any risk assessment necessary to determine whether notification of Breach is required.

- e. Business Associate agrees (i) to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to that information, and (ii) to the extent that Business Associate provides ePHI to an agent, including a subcontractor, ensure that the agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect that information.
- f. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner mutually agreed, to Protected Health Information in that Designated Record Set, to Covered Entity. If an Individual requests access to his or her Protected Health Information directly from Business Associate, Business Associate shall promptly forward such request to Covered Entity and Covered Entity shall be responsible for responding to such request in order to meet the requirements under 45 C.F.R. § 164.524.
- g. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate agrees to make any amendment(s) to Protected Health Information in that Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity. If an Individual requests an amendment of his or her Protected Health Information directly from Business Associate, Business Associate shall promptly forward such request to Covered Entity and Covered Entity shall be responsible for responding to such request.
- h. Business Associate agrees to make its internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary, in a time and manner mutually agreed or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule and Security Rule.
- i. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and, as of its Compliance Date, in accordance with the requirements for accounting for disclosures made through an Electronic Health Record in 42 U.S.C. 17935(c).
- j. Business Associate agrees to provide to Covered Entity in a time and manner mutually agreed, information collected in accordance with Section 2.i. of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and, as of its Compliance Date, in accordance with the requirements for accounting for disclosures made through an Electronic Health Record in 42 U.S.C. 17935(c).
- k. In the event that Business Associate in connection with the Underlying Services Agreements uses or maintains a Designated Record Set on behalf of Covered Entity, then the Business Associate shall provide an electronic copy (at the request of Covered Entity, and in the time and manner designated by Covered Entity) of the PHI, to Covered Entity all in accordance with 42 U.S.C. § 17935(e) as of its Compliance Date.

- l. Business Associate shall request, use and/or disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure; provided, that Business Associate shall comply with 42 U.S.C. § 17935(b).
- m. Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI in compliance with 42 U.S.C. § 17935(d).
- n. Business Associate shall not make or cause to be made any communication about a product or service that is prohibited by 42 U.S.C. § 17936(a).
- o. Business Associate shall not make or cause to be made any written fundraising communication that is prohibited by 42 U.S.C. § 17936(b).
- p. To the extent not provided herein, the Business Associate shall comply with each of the applicable requirements imposed on the Business Associate by HITECH, as of the applicable Compliance Date. In the event there is additional guidance or regulations, or a change in law, which impacts the terms of this Agreement, parties shall negotiate in good faith any changes to this Agreement.
- q. If and to the extent applicable, Business Associate will comply, and will require any subcontractor or agent involved with the conduct of such Standard Transactions to comply, with each the applicable requirements of 45 C.F.R. Part 162. The exchange of information related to (i) enrollment and disenrollment information and (ii) account balances and premium payment information, and any retransmission of that information, is sent or received by the Plan Sponsor (or its designated agent) in its capacity as an employer.

3. Permitted Uses and Disclosures by Business Associate

a. General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Client or Covered Entity as specified in the Underlying Services Agreements, provided that, except as set forth in Section 3.b., such use or disclosure would not violate the Privacy Rule and Security Rule if done by Covered Entity.

b. Specific Use and Disclosure Provisions

- 1) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 2) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- 3) On behalf of Covered Entity, Business Associate may de-identify any and all PHI obtained by Business Associate under this Agreement, and use such de-identified

data on Business Associate's own behalf, all in accordance with the de-identification requirements of the Privacy Rule.

- 4) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- 5) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).
- 6) Business Associate may use PHI to the extent and for any purpose authorized by an Individual under 45 C.F.R. § 164.508.

4. Obligations of Covered Entity

- a. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information under this Agreement.
- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information under this Agreement.
- c. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information to which Covered Entity has agreed in accordance with 45 C.F.R. § 164.522 or 42 U.S.C. § 17935(a) as of its Compliance Date, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information under this Agreement.
- d. Covered Entity in performing its obligations and exercising its rights under this Agreement shall use and disclose Protected Health Information in compliance with HIPAA.

5. Permissible Requests by Covered Entity

- a. Covered Entity shall not request or require Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule and Security Rule if done by Covered Entity, provided that Business Associate may use or disclose PHI as set forth in Section 3.b. of this Agreement. Covered Entity shall disclose or provide access to Business Associate only to the minimum PHI necessary for Business Associate to perform its obligations under the Underlying Services Agreements and Covered Entity represents that any request it makes for PHI from Business Associate shall be limited to the minimum PHI necessary to accomplish the permitted purpose of the applicable request or use.

6. Term and Termination

- a. Term. The Term of this Agreement shall be effective as of the Effective Date and shall terminate upon the final expiration or termination of the last remaining Underlying Services Agreement subject to this Agreement, unless earlier terminated in accordance with this Section 6:
- b. Termination for Cause. In accordance with 42 U.S.C. § 17934(b), if either Party knows of a pattern of activity or practice of the other Party that constitutes a material breach or violation

of this Agreement then the non-breaching Party shall provide written notice of the breach or violation to the other Party that specifies the nature of the breach or violation. The breaching Party must cure the breach or end the violation on or before thirty (30) days after receipt of the written notice. In the absence of a timely cure reasonably satisfactory to the non-breaching party, or in the event that cure is not possible, then the non-breaching party shall immediately terminate this Agreement unless neither termination nor cure is feasible, in which case the non-breaching party shall report the violation to the Secretary.

c. Effect of Termination.

- 1) Except as provided in paragraph (2) of this Section 6.c., upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, including Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- 2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible and Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.
- 3) Covered Entity agrees that it is infeasible for Business Associate to return or destroy the Protected Health Information reasonably needed to be retained by Business Associate for its own legal and risk management purposes.

7. Miscellaneous

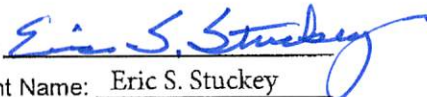
- a. Amendment of Underlying Services Agreements. The Parties agree that the term and conditions of this Agreement hereby amend and are incorporated into and made a part of the Underlying Services Agreements as of the Effective Date of this Agreement, and any reference to the Underlying Services Agreements on or after that date shall mean the Underlying Services Agreements as amended by this Agreement. This Agreement supersedes all prior Business Associate Agreements between the parties with respect to the Underlying Services Agreements.
- b. Regulatory References. A reference in this Agreement to a section in the Privacy Rule, Security Rule and/or HITECH means the section as in effect or as amended.
- c. Future Amendment. Covered Entity and Business Associate agree to take such action as is necessary to amend this Agreement and the Underlying Services Agreements from time to time as necessary for the Parties to comply with the requirements of HIPAA.
- d. Survival. The respective rights and obligations of Business Associate under Section 6.c. of this Agreement shall survive the termination of this Agreement.
- e. Interpretation. Any ambiguity in this Agreement shall be resolved to permit both Parties to comply with the Privacy Rule, Security Rule, and/or HITECH.
- f. Relation to Underlying Services Agreements. With the exception of the terms and conditions

set forth in this Agreement in regards to PHI, all other terms and conditions of the Underlying Services Agreements shall remain unaltered and in full force and effect. The obligations in this Agreement shall be subject to the terms and conditions in the Underlying Services Agreements, except to the extent there is any conflict between the terms of this Agreement and the Underlying Services Agreements, this Agreement shall govern with respect to the subject matter herein.

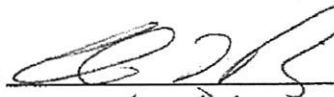
- g. No Third Party Beneficiary. Nothing express or implied in this Agreement is intended to confer, nor will anything herein confer, upon any person other than the Parties and the permitted respective successors or assigns of the Parties, any right, remedies, obligations or liabilities whatsoever.
- h. Governing Law. Except to the extent preempted by federal law, this BAA will be governed by and construed in accordance with the laws of the state of Tennessee.
- i. Waiver. No provision of this Agreement shall be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.
- j. Incorporation of Recitals. The Recitals set forth at the beginning of this Agreement are hereby incorporated by reference into this Agreement.

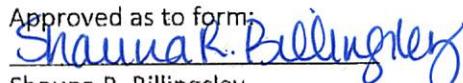
IN WITNESS WHEREOF, Covered Entity and Business Associate have executed the Business Associate Agreement on the date written below.

City of Franklin

By: 
Print Name: Eric S. Stuckey
Print Title: City Administrator
Date: 08/06/19

WILLIS TOWERS WATSON US LLC.

By: 
Print Name: Lou Diaz
Print Title: ML Director
Date: 7-18-2019

Approved as to form:

Shauna R. Billingsley
City Attorney