

BUSINESS ASSOCIATES AGREEMENT
Between
THE CITY OF COLUMBIA, MISSOURI
And
Inova Health Care Services
For
EMPLOYEE ASSISTANCE PROGRAM SERVICES

THIS BUSINESS ASSOCIATES AGREEMENT (hereinafter "Business Associates Agreement") by and between the City of Columbia, Missouri, a municipal corporation (hereinafter called "CITY" or "Covered Entity"), and **Inova Health Care Services (d/b/a Inova Employee Assistance)**, a **non-stock, nonprofit corporation** organized in the Commonwealth of **Virginia**, and with authority to transact business within the State of Missouri, (hereinafter called "Contractor" or "Business Associate") is entered into on the date of the last signatory noted below ("Effective Date"). CITY and Business Associate are each individually referred to herein as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, Business Associate has been engaged to provide employee assistance program services as set forth in the Services Agreement for or on behalf of Covered Entity; and

WHEREAS, in connection with these services, Business Associate uses or discloses individually identifiable health information, including Protected Health Information ("PHI"), as part of performing said services, or otherwise performs a function that is subject to protection under HIPAA and the HITECH Act; and

WHEREAS, HIPAA requires that Covered Entity receive adequate assurances that Business Associate will appropriately safeguard PHI that has been used or disclosed in the course of providing services to or on behalf of Covered Entity; and

WHEREAS, the Parties have entered into a Services Agreement ("Agreement") related to the functions or services it will perform on behalf of Covered Entity in which the exchange of PHI is necessary or likely to occur; and

WHEREAS, the purpose of this BAA is to comply with the requirements of HIPAA.

NOW, THEREFORE, in consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Parties agree as follows:

1. Business Associate shall comply with the Federal Health Insurance Portability and Accountability Act of 1996 and its related regulations (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009 and related regulations promulgated by the Secretary (the “HITECH”).

a. Definitions. As may be amended from time to time, the following HIPAA and HITECH Act definitions shall apply to this Agreement. Any terms not specifically described in this Agreement shall have the meanings ascribed to such in HIPAA and HITECH Act.

1. Business Associate: “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this Agreement as it creates, receives, maintains or transmits PHI for a function, activity or service regulated by HIPAA, and which includes a Subcontractor that creates, receives, maintains or transmits PHI on behalf of a Business Associate. In reference to the party to this agreement, “Business Associate” shall mean CONTRACTOR.

2. Covered Entity: “Covered Entity” shall generally have the same meaning as the term “covered entity” or “hybrid covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, “Covered Entity” shall mean the City of Columbia, Missouri.

3. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

b. Obligations of Covered Entity:

1. Covered entity shall notify business associate of any limitation(s) in the notice of privacy practices of covered entity under 45 CFR 164.520, to the extent that such limitation may affect business associate’s use or disclosure of protected health information.

2. Covered entity shall notify business associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect business associate’s use or disclosure of protected health information.

3. Covered entity shall notify business associate of any restriction on the use or disclosure of protected health information that covered

entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect business associate's use or disclosure of protected health information.

c. Obligations and Activities of Business Associate: Business Associate shall:

1. Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;
2. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;
3. Timely report to covered entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;
4. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree, in writing, to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;
5. Make available protected health information in a designated record set to the individual or the individual's designee as necessary to satisfy covered entity's obligations under 45 CFR 164.524;
6. Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526;
7. Maintain and make available the information required to provide an accounting of disclosures to the individual as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;
8. To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and

9. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

d. Permitted Uses and Disclosures by Business Associate

1. Business Associate may only use or disclose protected health information as necessary to perform the services set forth in the Service Agreement. Business Associate shall not use any information derived therefrom except as necessary to perform the services set forth in the Service Agreement.
2. Business Associate may use or disclose protected health information as required by law.
3. Business Associate agrees to make uses, disclosures and requests for protected health information consistent with City's written instructions, policies and procedures which are provided to Business Associate. Business Associate shall comply with any policy or procedure to which Business Associate shall have notice.
4. Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.

f. Term and Termination

1. Term. The Term of this Business Associate Agreement shall be effective as of the Effective Date of the Services Agreement and shall terminate on the date Business Associate returns or destroys all protected health information, or on the date City specifically terminates in writing the Business Associate Agreement, whichever is sooner.
2. Termination for Cause. City may terminate this Business Associate Agreement for cause if there is an Event of Default as defined in section 8(c) of the Agreement. Upon the occurrence of an Event of Default, the City shall be entitled to immediately terminate this Business Associate Agreement.
3. Obligations of Business Associate Upon Termination. Upon termination of this Business Associate Agreement for any reason, Business Associate shall either certify the destruction of all protected health information or return to City all protected health information received from City, or created, maintained, or received by Business Associate on behalf of City that the Business

Associate maintains in any form. Business Associate shall retain no copies of the protected health information. Notwithstanding the foregoing, Business Associate may retain portions of protected health information in accordance with its procedures implemented to comply with applicable law or regulation, record retention policies, litigation hold requirements or audit logging requirements, provided that all such protected health information remains subject to the terms of this Agreement and may not be used except for such compliance purposes.

5. Survival. The obligations of Business Associate under this Section shall survive the termination of the Services Agreement.

g. Miscellaneous

1. Regulatory References. A reference in this Business Associate Agreement to any Federal or State law, rule or regulation means that law, rule or regulation currently in effect or as amended, and for which compliance is required.
2. Amendment. The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191. No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.
3. Survival. The respective rights and obligations of Business Associate under this Business Associate Agreement shall survive the termination of the Agreement.
4. Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191.
5. Governing Law and Venue. This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State

of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Agreement, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.

6. Notices. Any notice, demand, request, or communication required or authorized by this Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to CITY:

City Purchasing Agent
Finance Department
701 E. Broadway
P.O. Box 6015
Columbia, MO 65205-6015
Telephone: (573) 874-7375

If to CONTRACTOR:

Inova Employee Assistance
3949 Pender Drive, Suite 310
Fairfax, Virginia 22030
ATTN: Executive Director

With a copy to:

**City of Columbia Human
Resources Department**
P.O. Box 6015
Columbia, MO 65205-6015
ATTN: **Margrace Buckler**

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand or facsimile and on deposit by the sending party if delivered by courier or U.S. mail.

7. No Waiver of Sovereign Immunity. In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.
8. **HOLD HARMLESS AGREEMENT:** To the fullest extent not prohibited by law, Business Associate shall indemnify and hold harmless the City of Columbia, its directors, officers, agents, and employees from and against all claims, damages, losses, and

expenses (including but not limited to attorney's fees) arising by reason of any negligent or wrongful act or failure to act of Business Associate, of any subcontractor (meaning anyone, including but not limited to Contractors having a contract with Business Associate or a subcontractor for part of the services), of anyone directly or indirectly employed by Business Associate or by any subcontractor, or of anyone for whose acts Business Associate or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require Business Associate to indemnify, hold harmless, or defend the City of Columbia from its own actions, inactions, (willful or otherwise), or its own negligence.

The obligation of the indemnifying party hereunder shall apply only if the indemnified party provides prompt notification upon receipt of notice of any claim or suit, permit the indemnifying party and its attorneys and personnel to handle and control the defense of such claims or suits, including pretrial, trial or settlement, and the indemnified party fully cooperates and assists in such defense. The indemnified party further agrees that if it settles or compromises any such claim or suit without the prior written consent of the indemnifying party, the indemnified party forfeits its right of indemnification. This Indemnification Section shall survive termination or expiration of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have set their hands on the day and year written below.

CITY OF COLUMBIA, MISSOURI

By: _____
Michael Matthes, City Manager

Date: _____

ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor

(Seal)

Inova Health Care Services

By: Nescha D. McCall
Chief Compliance & Privacy Officer
Date: 11/2/17

ATTEST:

By: _____

Name: _____