

BUSINESS ASSOCIATE AGREEMENT

Covered Entity	Health First Health Plans, Inc. and Health First Insurance, Inc.
Business Associate	
Underlying Agreement	Health First Agent & Broker Agreement
Effective Date <i>To be completed by HFHP</i>	

This BUSINESS ASSOCIATE AGREEMENT ("Agreement") is executed this ___ day of _____, 20___, by and between Covered Entity and Business Associate, and is effective as of the Effective Date specified above.

RECITALS

WHEREAS, Covered Entity and Business Associate are parties to an agreement (the "Underlying Agreement"), pursuant to which Business Associate provides certain services to Covered Entity and, in connection with those services, Covered Entity discloses to Business Associate (hereinafter defined) certain individually identifiable protected health information that is subject to protection under HIPAA (hereinafter defined) and the HITECH Act (hereinafter defined); and

WHEREAS, the parties desire to comply with the requirements of HIPAA and the HITECH Act, including the amendments and regulations.

NOW THEREFORE, for and in consideration of the recitals above and the mutual covenants and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Covered Entity and Business Associate agree to the foregoing and as follows.

1. DEFINITIONS

1.1 Generally. Unless otherwise provided herein, terms used herein (whether or not capitalized) shall have the same meanings as are given to them under HIPAA or the HITECH Act, including amendments and regulations.

1.2 Breach. "Breach" has the same meaning as the term "breach" in 45 C.F.R. §164.402.

- 1.3 HIPAA.** "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, P.L. 104-91, as the same may be amended from time to time, and including all regulations promulgated and official guidance issued, thereunder.
- 1.4 HITECH Act.** "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, P.L. 111-005, as the same may be amended from time to time, and including all regulations promulgated, and official guidance issued, thereunder.
- 1.5 Individual.** "Individual" has 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).
- 1.6 Privacy Rule.** "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164.
- 1.7 Protected Health Information or PHI.** The term "Protected Health Information" or "PHI" has the same meaning as the term "protected health information" in 45 C.F.R. §160.103, limited to the information created or received by Business Associate (and its subcontractor Associates) from or on behalf of Covered Entity.
- 1.8 Required By Law.** "Required By Law" has the same meaning as the term "required by law" in 45 C.F.R. §164.103.
- 1.9 Security Incident.** "Security Incident" shall have the meaning given to such term in 45 C.F.R. §164.304, but shall not include, (a) unsuccessful attempts to penetrate computer networks or servers maintained by Business Associate and (b) immaterial incidents that occur on a routine basis, such as general "pinging" or "denial of service" attacks.
- 1.10 Security Rule.** "Security Rule" means the Security Standards at 45 C.F.R. parts 160, 162 and 164.
- 1.11 Unsecured PHI.** "Unsecured PHI" has the same meaning as the term "unsecured protected health information" at 45 C.F.R. §164.402.

2. USES AND DISCLOSURES OF PHI

- 2.1 General.** Business Associate, its employees, agents and subcontractor Associates (collectively referred to herein and included as "Business Associate") shall not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule, the HITECH Act, this Agreement or the Underlying Agreement. Subject to the foregoing, Business Associate may use and disclose PHI solely as and to the extent necessary to perform Business Associate's duties under the Underlying Agreement or as required by Law. Business Associate agrees to make uses and disclosures and requests for PHI consistent with Covered Entity's Minimum Necessary policies and procedures and Covered Entity's Notice of Privacy Practices. If Covered Entity provides written notice

to Business Associate of a restriction on PHI disclosure pursuant to 45 C.F.R. §164.522, Business Associate shall restrict disclosure of such PHI as provided in such notice. The additional HITECH Act requirements that relate to privacy and that are made applicable with respect to covered entities are incorporated herein by this reference and are acknowledged by Business Associate to be applicable to Business Associate (see §13404(a) of the HITECH Act). To the extent the Business Associate is to carry out the Covered Entity's obligations under the law, Business Associate shall comply with all privacy and security laws applicable to Covered Entity. Business Associate agrees that sections 164.504(e)(2) through (e)(4) apply to Business Associate, and that Business Associate shall require a written affirmation that any subcontractor Associate shall also comply with these sections.

“Nonpublic Personal Financial Information” (or “NPF”) shall have the same meaning set out in Florida Administrative Code section 69J-128.002, as amended or replaced from time to time. For the purposes of this BA Agreement, the same provisions that apply to PHI shall apply to NPF.

2.2 Safeguards. Business Associate shall develop, implement, maintain and use appropriate safeguards to prevent the access, acquisition, use or disclosure of PHI other than as provided for in this Agreement. For the purposes of this Agreement, Safeguards shall include but not be limited to, compliance with all elements of the Security Rule (physical, administrative, and technical requirements). Any additional HITECH Act requirements that relate to security and that are made applicable with respect to covered entities are incorporated herein by this reference and are acknowledged by Business Associate to be applicable to Business Associate (see §13404(a) of the HITECH Act), subject to the modifications to such requirements that are set forth in **Section 2.3.2** of this Agreement. Without limiting the generality of the foregoing, Business Associate shall: (a) implement safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity; (b) ensure that any agent, including a subcontractor Associate, to whom Business Associate provides this information agrees in writing to implement the same safeguards that are applicable to the Covered Entity; (c) promptly report to Covered Entity any security incident of which it becomes aware; (d) make Business Associate's policies and procedures, and documentation required by the Security Rule relating to such safeguards, available to Covered Entity and, if requested by Covered Entity, to the Secretary, for purposes of determining Covered Entity's compliance with the Security Rule; (e) At the request of Health First, complete an annual self-assessment security questionnaire to ensure all security controls and data exchanges are appropriate; (f) Consent to periodic audits by Health First to ensure security requirements are being met; and (g) Provide timely notification (30 business days) in the event any proposed changes will effect ePHI. To the extent that Business Associate submits standard transactions on behalf of Covered Entity or assists Covered Entity with submission of standard transactions, Business Associate will comply with HIPAA and HITECH Act transaction and code set standards for such transactions.

2.3 **Reporting.**

2.3.1 Unauthorized Access, Acquisition, Use or Disclosure. Promptly (not longer than five (5) business days) after becoming aware of any unauthorized access, acquisition, use or disclosure of PHI in violation of the terms of this Agreement or any law, Business Associate shall notify Covered Entity of the same in writing, providing in such notice reasonable details respecting such unauthorized access, acquisition, use or disclosure.

2.3.2 Breaches. Promptly (not later than five (5) business days) following its discovery (as such term is defined in 45 C.F.R. §164.410(a)) thereof, Business Associate shall notify Covered Entity in writing of any Breach of Unsecured PHI, which notice must conform to the requirements set forth in 45 C.F.R. §164.410(c), and shall cooperate with Covered Entity in the providing of any notices that Covered Entity deems appropriate respecting such Breach. Additionally, and without limiting any other rights and remedies that may then be available to Covered Entity, Business Associate shall be responsible for any costs and expenses incurred by Covered Entity to comply with its legal obligations relating to such Breach including, without limitation, any costs and expenses incurred by Covered Entity in connection with providing notice of such Breach to affected individuals. Covered Entity, in its sole and absolute discretion, may elect to delegate to Business Associate the requirement under HIPAA and HITECH Act to notify affected individuals of a Breach of Unsecured PHI if such Breach results from or is related to an act or omission of Business Associate. If Covered Entity elects to make such delegation, Business Associate shall perform such notifications and any other reasonable remediation services (i) at Business Associate's sole cost and expense, and (ii) in compliance with all applicable laws including HIPAA and the HITECH Act. Business Associate shall also provide Covered Entity with the opportunity to review and approve the form and the content of any breach notification that Business Associate provides to Individuals.

2.3.3 Mitigation. If and as requested by Covered Entity, and to the extent practicable, Business Associate shall take steps to mitigate any harmful effect that is known to Business Associate of an: (a) access, acquisition, use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement or any law; or (b) Breach. Business Associate shall permit Covered Entity to investigate any such circumstances, including by examining Business Associate's premises, records and practices.

2.4 Use of Subcontractor Associates or Agents. To the extent Business Associate uses one or more subcontractor Associates or agents to provide services under the Underlying Agreement, and such subcontractor Associates or agents receive, create, maintain, transmit or have access to PHI, Business Associate will ensure that each such subcontractor Associates and agents agree, in writing, to all of the same restrictions, requirements, terms and conditions that apply to Business Associate in this Agreement. Business Associate shall ensure that any unauthorized acquisition, access, use, disclosure

or request of PHI by its subcontractor Associates is limited to information based on the minimum necessary standard. Business Associate shall monitor subcontractor Associate's compliance with the applicable business associate restrictions, terms, conditions and responsibilities. If the Business Associate knows of the subcontractor Associate's failure to comply with such restrictions, terms, conditions and responsibilities, Business Associate shall notify Covered Entity immediately and shall take reasonable steps to cure any deficiency and where appropriate Business Associate shall terminate the subcontractor Associate. Any agreement between Business Associate and a subcontractor Associate who will receive or access PHI will enter into a business associate agreement that complies with HIPAA and HITECH.

3. ACCESS, AMENDMENT AND OWNERSHIP OF PHI

- 3.1 Access to PHI.** If Business Associate maintains PHI in a Designated Record Set, promptly (not later than ten (10) business days) following Covered Entity's request, Business Associate shall make available to Covered Entity an Individual's PHI in order to enable Covered Entity to comply with the requirements of §164.524 of the Privacy Rule. PHI shall be provided in the form reasonably requested by Covered Entity. Business Associate shall make available protected health information in accordance with section 164.524.
- 3.2 Amendments to PHI.** If Business Associate maintains PHI in a Designated Record Set, promptly (not later than ten (10) business days) following Covered Entity's request, Business Associate shall make any amendments or corrections to PHI that Covered Entity directs or agrees to pursuant to §164.526 of the Privacy Rule. Business Associate shall make available protected health information for amendment and incorporate any amendments to protected health information in accordance with section 164.526.
- 3.3 Ownership of PHI.** As between Covered Entity and Business Associate, Covered Entity is and shall remain the sole and exclusive owner of the PHI.

4. ACCOUNTING OF DISCLOSURES; BOOKS AND RECORDS

- 4.1 Accounting of Disclosures.** Business Associate shall document disclosures of PHI and information related to such disclosures as necessary to enable Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528 and §13405(c) of the HITECH Act. Promptly (not longer than ten (10) business days) following Covered Entity's request, Business Associate shall provide to Covered Entity the information collected in accordance with this Section to enable Covered Entity to respond to a request by an Individual for an accounting of disclosures in accordance with 45 C.F.R. §164.528. If an Individual delivers a request for an accounting directly to Business Associate, Business Associate shall forward such request to Covered Entity within five (5) business days after receipt, and shall provide Covered Entity with the information with respect to disclosures made by Business Associate that is necessary for Covered Entity to respond within ten (10) business days of the request.

Business Associate will make available the information required to provide an accounting of disclosures in accordance with section 164.528.

- 4.2 Books and Records.** Business Associate shall make its internal practices, books and records relating to the use and disclosures of PHI available to Covered Entity, the Secretary of Health and Human Services or designee ("Secretary") for purposes of determining Covered Entity's compliance with HIPAA. Upon Covered Entity's request, Business Associate shall provide Covered Entity with copies of any information it has made available to the Secretary under this section. If requested, Business Associate shall submit compliance reports to Secretary, cooperate with Covered Entity and the Secretary in compliance investigations and compliance reviews.

5. ELECTRONIC TRANSACTIONS RULE

If, under the terms of the Underlying Agreement, Business Associate conducts all or part of any transaction under the latest adopted HIPAA's Standards for Electronic Transactions (as the same may have been and/or may be amended from time to time, the "Electronic Transactions Rule"), then Business Associate shall comply, and shall cause its employees, agents, representatives and subcontractor Associates to comply, with the applicable requirements of the Electronic Transactions Rule.

6. TERM AND TERMINATION

- 6.1 Violations; Termination.** If Covered Entity reasonably determines that Business Associate (or a subcontractor Associate) has violated a material term of this Agreement and that such violation is curable, Business Associate shall have ten (10) business days following receipt from Covered Entity of written notice requiring it to do so to remedy the violation and provide evidence of cure to Covered Entity which must be satisfactory to Covered Entity in its sole discretion. If such violation is not curable or is not cured to the satisfaction of Covered Entity within that time, Covered Entity shall have the right to terminate this Agreement and/or the Underlying Agreement without penalty or further liability or obligation on the part of Covered Entity.
- 6.2 Return/Destruction of PHI.** Within two (2) business days of the expiration or earlier termination of this Agreement and/or the Underlying Agreement for whatever reason, Business Associate shall return or destroy in accordance with the NIST 800-88 publication for Media Sanitization, all PHI, if feasible, received from, or created or received by it on behalf of, Covered Entity which Business Associate maintains in any form, and retain no copies of such information. Promptly (not later than ten (10) business days) following Covered Entity's request, an authorized representative of Business Associate shall certify in writing to Covered Entity that all PHI has been returned or disposed of as provided above and that Business Associate no longer retains any such PHI in any form.
- 6.3 Return/Destruction of PHI Not Feasible.** To the extent return or destruction of PHI is not feasible, Business Associate shall extend the precautions of this Agreement to such

information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. Business Associate shall remain bound by the provisions of this Agreement, even after termination of this Agreement and/or the Underlying Agreement, until such time as all PHI has been returned or otherwise destroyed as provided in this section.

- 6.4** **Effect of Termination.** All rights, duties and obligations established in this Agreement shall survive any termination of this Agreement.

7. INDEMNIFICATION/INSURANCE

- 7.1** **Indemnification.** Business Associate shall forever indemnify and hold Covered Entity harmless from and against all claims, liabilities, judgments, fines, assessments, penalties, awards or other expenses, of any kind or nature whatsoever, including, without limitation, attorney's fees, expert witness fees, and costs of investigation, litigation or dispute resolution, relating to or arising out of any: (a) Breach or alleged breach of this Agreement by Business Associate; (b) Breach by Business Associate; or (c) breach notification in response to a Breach by Business Associate.
- 7.2** **Insurance.** If Covered Entity requires, Business Associate shall obtain and maintain insurance coverage against improper acquisition, access, use and/or disclosure of PHI by Business Associate, naming Covered Entity as an additional named insured. Promptly following a request by Covered Entity for the maintenance of such insurance coverage, Business Associate shall provide a certificate evidencing such insurance coverage.

8. MISCELLANEOUS

- 8.1** **Amendments.** If additional laws or regulations affecting covered entities and/or business associates are promulgated (whether pursuant to HIPAA, the HITECH Act or otherwise) (each, a "Modification") and, as a result, Covered Entity determines that modifications to the terms of the Agreement are required in order for Covered Entity to comply with such Modification(s) (including by way of example and not of limitation, if additional provisions are required to be included in agreements between covered entities and business associates), promptly following Covered Entity's request, the parties shall engage in good faith negotiations regarding any such modifications that may be necessary or appropriate. If the parties are unable to agree on any such modifications following such good faith negotiations, which negotiations shall not exceed sixty (60) business days from the date of Covered Entity's request for negotiations, then following expiration of such sixty (60) business day period, Covered Entity shall have the right to terminate this Agreement and/or the Underlying Agreement without penalty or further liability or obligation on the part of Covered Entity.
- 8.2** **Attorney Fees/Costs.** If a party brings an action, proceeding or claim against the other party arising out of or relating to this Agreement, or pertaining to a declaration of rights under this Agreement, the trier of fact may, in the exercise of its discretion, award the

party it finds to be the prevailing party in such action, proceeding or claim that portion or all of its fees, costs and expenses (including court costs and reasonable fees for attorneys and expert witnesses) that it deems to be appropriate under the facts and circumstances. The term "prevailing party" for purposes of this Section shall include a defendant or plaintiff, as applicable, who has by motion, judgment, verdict or dismissal by the court, successfully: (a) defended against any claim that has been asserted against it, in the case of a defendant; and/or (b) asserted any claim against a defendant, in the case of a plaintiff.

- 8.3 Authority To Contract.** Business Associate represents and warrants to Covered Entity that it is authorized to enter into this Agreement and to be bound by the terms of it. Covered Entity represents and warrants to Business Associate that it is authorized to enter into this Agreement.
- 8.4 Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective permitted successors and assigns.
- 8.5 Construction.** This Agreement shall be construed as broadly as necessary to implement and comply with HIPAA and the HITECH Act. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HITECH Act.
- 8.6 Construction of Terms.** The term "Business Associate" shall include the successors and assigns of the Business Associate. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. Titles to all sections used in this Agreement are for purposes of identification only and shall not vary the content of the section.
- 8.7 Governing Law, Conflict and Choice of Laws.** This Agreement shall be governed by the laws of the State of Florida in regards to its execution, interpretation and enforcement, without giving effect to any principles of conflicts of law. Exclusive jurisdiction and venue for any dispute relating to this Agreement shall reside in the circuit court of Brevard County, Florida. The parties agree and expressly consent to the exercise of personal jurisdiction in said court in connection with any such dispute.
- 8.8 No Construction Against Drafter.** This Agreement is not to be construed against the drafting party.
- 8.9 Nonassignable.** Nothing contained in this Agreement shall be construed to permit assignment by Business Associate of any of Business Associate's rights or obligations under this Agreement, and such assignment is expressly prohibited.
- 8.10 No Right to Rely.** Nothing stated herein shall give any person other than the parties hereto any right to rely on any of the rights or obligations hereunder and likewise no other person shall be a third-party beneficiary hereof.

8.11 Notices. Any written notice required or permitted to be delivered pursuant to this Agreement shall be in writing and shall be deemed delivered: (a) upon delivery if delivered in person; (b) three (3) business days after deposit in the United States mail, certified mail, return receipt requested, postage prepaid; or (c) one (1) business day after deposit with a national overnight courier, in each case addressed to the following address:

If to Covered Entity:

Health First Health Plans

6450 US Highway 1

Rockledge FL 32955

Attention: Andrew Weintraub

Facsimile: 321-434-4362

with a copy to:

Health First, Inc.
6450 Highway US1
Rockledge, FL 32955
Attention: David Mathias, Sr.
VP Corporate Counsel

and

Health First, Inc.
1350 South Hickory Street
Melbourne, FL 32901
Attention: Tanya Kuehnast, Chief Privacy Office

or to such other addresses as may be specified by such party upon notice given to the other.

8.12 Priority of Agreement. If any portion of this Agreement is inconsistent with the terms of the Underlying Agreement, the terms of this Agreement shall prevail. Except as set forth above, the remaining provisions of the Underlying Agreement are ratified in their entirety.

8.13 Waiver. No waiver of any rights or obligations hereunder shall be deemed to have occurred unless in writing signed by the party against whom such waiver is asserted and no waiver shall be deemed a waiver of any other or subsequent rights or obligations.

If to Business Associate:

Attention: _____

Facsimile: _____

with a copy to:

Attention: _____

Facsimile: _____

- 8.14 **Discrimination/Intimidation.** Business Associate and its subcontractor Associates shall not intimidate, take adverse action against or discriminate against any person or entity that has made a complaint relating to this Agreement, has cooperated with a regulatory entity, cooperated with an investigation or opposed an unlawful action.
- 8.15 **Remuneration for PHI.** Unless allowed under HIPAA and HITECH, Business Associate may not receive any remuneration or anything of value from a nonparty for the exchange or transfer of any PHI received from or accessed through this Agreement.
- 8.16 **State Law.** Business Associate agrees that it will implement and maintain appropriate disclosure and security measures to protect personal information and healthcare privacy information consistent with state and federal laws, including the law of the State of Florida. The confidentiality obligations hereunder are independent of and do not limit or otherwise affect the Parties' other confidentiality obligations under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement in Melbourne, Brevard County, Florida, on the day and year first hereinabove written.

COVERED ENTITY

BUSINESS ASSOCIATE

By: Andrew Weintraub

By: _____

Its: VP of Sales & Business Development

Its: _____