

## **BUSINESS ASSOCIATE AGREEMENT**

Capson Physicians Insurance Agency (“*CPIA*”) and the policyholder have an insurer/insured relationship by virtue of a professional liability policy (hereinafter “*Insurance Policy*”) issued by Granite State Insurance Company. *CPIA* and the named policyholder are committed to complying with the Standards for Privacy of Individually Identifiable Health Information (the “*Privacy Regulations*”) under the Health Insurance Portability and Accountability Act of 1996 (“*HIPAA*”) and the Health Information Technology for Economic and Clinical Health Act (“*HITECH*”). Under the Privacy Regulations, the policyholder is a “covered entity” and, as defined by 45 CFR Section 164.502(e) and 45 CFR Section 164.504(e), *CPIA* may be a business associate of the policyholder. *CPIA* must use and/or disclose Protected Health Information in its performance of services under the Insurance Policy. This agreement sets forth the manner in which Protected Health Information that is provided to or received by, *CPIA* from the policyholder, or on behalf of the policyholder, will be handled. *CPIA* and policyholder agree as follows:

### **Section 1**

#### **Obligations, Permitted Uses and Activities of CPIA**

1. *CPIA* may use and disclose Protected Health Information received by *CPIA* on behalf of the policyholder, if necessary for proper management and administration of *CPIA* to carry out legal responsibilities, provided that any disclosure is:
  - a) Required by law, or
  - b) *CPIA* obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that (i) the Protected Health Information will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person; and (ii) *CPIA* will be notified of any instances of which the person is aware in which the confidentiality of the information is breached.
2. *CPIA* agrees to use reasonable safeguards to prevent use or disclosure of the Protected Health Information other than as allowed by this Agreement or otherwise required or allowed by law. *CPIA* acknowledges that HITECH requires it to comply with the security provisions in 45 CFR Sections 164.308, 164.312 and 164.316 as well as all additional security provisions of HITECH as if *CPIA* were a covered entity.
3. *CPIA* agrees to report to policyholder any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware. *CPIA* will comply with Section 13402 of HITECH with respect to timeliness, method and content of the report.
4. *CPIA* agrees to ensure that any agent, including subcontractors, to whom it provides Protected Health Information received from, or created or received by policyholder to agree to the same restrictions and conditions that apply to *CPIA* through this Agreement, provided that such agents perform a service that *CPIA* agreed to perform for, or on behalf of, the policyholder under the Insurance Policy, and to whom *CPIA* provides Protected Health Information.

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5. To the extent that CPIA maintains an original Designated Record Set, as defined in 45 CFR Section 164.501, or a part thereof, CPIA agrees to provide access to the policyholder to Protected Health Information in the original Designated Record Set, during normal business hours, provided the policyholder delivers prior written notice to CPIA requesting access but only to the extent required by law.
6. To the extent that CPIA maintains an original Designated Record Set, CPIA agrees to make any amendments to Protected Health Information in a Designated Record Set, available for amendment to the policyholder and to incorporate any amendment(s) to Protected Health Information in the original Designated Record Set that the policyholder directs, pursuant to 45 CFR Section 164.526.
7. Unless otherwise protected or prohibited from discovery or disclosure by law, CPIA agrees to make internal practices, books, and records available to the policyholder or to the Secretary of the Department of Health and Human Services (hereinafter referred to as "*Secretary*") for purposes of the Secretary determining the policyholder's compliance with the Privacy Regulations but only to the extent such access is related to the use and disclosure of Protected Health Information received from the policyholder, or created or received by CPIA on behalf of the policyholder. CPIA shall have a reasonable time within which to comply with such requests and, in no case shall access be required in less than five business days after CPIA is in receipt of such request.
8. Pursuant to 45 CFR Section 164.528, as amended by Section 13405 (c) of HITECH and any related regulations or guidelines, CPIA agrees to maintain sufficient documentation of disclosures of Protected Health Information and information related to such disclosures as would be required for the policyholder to respond to a request by an Individual for an accounting of disclosures of Protected Health Information. The documentation of disclosures does not apply to disclosures necessary to carry out health care operations and Services (as defined in Section 2(1) below) and other functions necessary to perform these Services.
9. CPIA agrees to provide the policyholder information collected in accordance with Section 1(8) of this Agreement, to permit the policyholder to respond to a request by an individual for accounting disclosures of Protected Health Information in accordance with 45 CFR Section 164.528.

### **Section 2** **Permitted Uses and Disclosures by CPIA**

1. Under the Insurance Policy, the policyholder is provided insurance products and services that involve the use and disclosure of Protected Health Information as defined by the Privacy Regulations. These services (the "*Services*") may include, among others, the provision of professional liability insurance; receiving and evaluating incidents, claims and lawsuits; quality assessment; quality improvement; loss prevention tools; outcome evaluations; protocol and clinical guidelines development; reviewing the competence or qualifications of health care professionals; evaluating practitioner and provider performance; conducting training programs to improve the skills of health care practitioners; credentialing, conducting or arranging for medical review; arranging for

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legal services; conducting or arranging for audits to improve compliance; resolution of internal grievances; placing stop-loss and excess of loss insurance, and other functions necessary to perform these Services. CPIA may make any uses of Protected Health Information necessary to perform its obligations under this Agreement and under the Insurance Policy, if such use of Protected Health Information would not violate the Privacy Regulations. Moreover, CPIA may disclose Protected Health Information for the purposes authorized by this Agreement: (i) to its employees, subcontractors, and agents, in accordance with Section 2(2) through 2(4) below; or (ii) as otherwise permitted by the terms of this Agreement. All other uses not authorized by this Agreement are prohibited.

2. CPIA may use Protected Health Information for the proper management and administration of CPIA or to carry out the legal responsibilities of CPIA.
3. CPIA may disclose Protected Health Information for proper management and administration and to carry out its legal responsibilities, provided that disclosures are required by law, or provided that CPIA obtains the following reasonable assurances from the person or entity to whom the Protected Health Information is disclosed: (1) the Protected Health Information will remain confidential; (2) the Protected Health Information will be used or further disclosed only as required by law or for the purposes for which it was disclosed; and (3) the person or entity will notify CPIA of any instances of which the person or entity is aware in which the confidentiality of the information has been breached. In compliance with Section 13405(b) of HITECH, CPIA will only disclose the minimum necessary to accomplish the intended purpose of the disclosure and, if applicable, to the limited data set as defined in 45 CFR Section 164.514(e)(2).
4. If necessary to provide services related to a policyholder's health care operations, CPIA may use Protected Health Information to provide data aggregation services to the policyholder as permitted by 45 CFR section 164.504.
5. CPIA may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR section 164.502.

### **Section 3**

#### **Obligations of and Permissible Requests by Policyholder**

1. The policyholder shall notify CPIA of any limitation(s) in its notice of privacy practices in accordance with 45 CFR section 164.520, to the extent that such limitation may affect CPIA's use or disclosure of Protected Health Information.
2. The policyholder shall notify CPIA of any changes in, or revocation of, permission by individuals to use or disclose Protected Health Information, to the extent that such changes may affect CPIA's use or disclosure of Protected Health Information.

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3. The policyholder shall notify CPIA of any restriction to the use or disclosure of Protected Health Information that the policyholder has agreed to in accordance with 45 CFR section 164.522, to the extent that such restriction may affect CPIA's uses or disclosure of Protected Health Information.
4. The policyholder shall not request CPIA to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Regulations if done by the policyholder. This provision does not apply to CPIA's use or disclosure of Protected Health Information for data aggregation or management and administrative activities as is otherwise permitted by this Agreement.

### **Section 4** **Term and Termination of Agreement**

1. The Term of this Agreement shall be effective beginning July 1, 2016 and shall terminate when all the Protected Health Information provided by the policyholder to CPIA, or created or received by CPIA on behalf of the policyholder, is destroyed. Protected Health Information is securely retained and/or destroyed as designated by CPIA policies for retention and destruction of Protected Health Information. Protections are extended to such information, in accordance with the termination provisions in this section. This agreement shall supersede any existing business associate agreements issued in accordance with the Privacy Regulations under HIPAA.
2. Upon the policyholder's knowledge of a material breach by CPIA of this Agreement, the policyholder shall either: (1) provide an opportunity to cure the breach or end the violation within a reasonable period of time. If CPIA does not cure the breach or end the violation within the reasonable period of time specified by the policyholder, the policyholder shall terminate this Agreement and the underlying Insurance Policy; (2) Immediately terminate this Agreement and the underlying Insurance Policy if CPIA has breached a material term of this Agreement and cure is not possible; or (3) if neither termination nor cure is feasible, the policyholder shall report the violation to the Secretary.
3. Due to the infeasibility of returning Protected Health Information to the policyholder, upon termination of this Agreement and/or the underlying Insurance Policy, for any reason, CPIA shall securely retain and/or destroy all Protected Health Information received from the policyholder, or created or received by CPIA on behalf of the policyholder in accordance with CPIA's policies for retention and destruction of Protected Health Information.

### **Section 5** **Miscellaneous Provisions**

1. A reference in this Agreement to a section in the Privacy Regulations means the section as in effect or as amended.

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2. CPIA and the policyholder agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the policyholder to comply with the requirements of the Privacy Regulations and HIPAA.
3. The respective rights and obligations of CPIA under Section 4(3) of this Agreement shall survive the termination of this Agreement.
4. Any ambiguity in this Agreement shall be resolved to permit CPIA to comply with the Privacy Regulations.

W. Thomas Cotten  
Chief Financial Officer

Policyholder signature has been submitted in electronic signature