



City of Grand Island

Tuesday, February 23, 2010

Council Session

Item G9

#2010-57 - Approving Amended HIPPA Business Associate Agreement with RCI and TASC

Staff Contact: Brenda Sutherland

Council Agenda Memo

From: Brenda Sutherland, Human Resources Director

Meeting: February 23, 2010

Subject: Amended Business Associate Agreement with Regional Care, Inc. (RCI) and TASC

Item #'s: G-9

Presenter(s): Brenda Sutherland, Human Resources Director

Background

The City of Grand Island has a business associate agreement with Regional Care, Inc. (RCI) to provide TPA services for the City's health and dental plan. In addition, we have a contract with TASC to administer our Section 125 Flexible Spending Account. Part of the service provided by these two companies is to ensure that compliance issues are met with regard to federal and state laws.

Discussion

Congress recently enacted the Health Information Technology for Economic and Clinical Health (HITECH) Act in 2009 which amended the HIPAA provisions of 1996. Health and Human Services subsequently adopted new HIPAA rules to implement the standards imposed by the HITECH Act. As such, the new HIPAA rules require an amendment to our current business associate agreement.

The standards set by the HITECH Act and the HIPAA rules require covered entities (such as employer sponsored plans) to notify participants of Breaches of Unsecured Protected Health Information. In addition, the new HIPAA rules impose an obligation on the business associate (RCI and TASC) to notify the City of any Breach of Unsecured Protected Health Information. These changes are reflected in the updated business associate agreement. These changes are necessary for HIPAA compliance and create no change in cost to the agreement.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the amended business associate agreement between the City and Regional Care, Inc. (RCI) and TASC.

Sample Motion

Move to approve the amended agreement between the City and Regional Care, Inc. (RCI) and TASC.

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (this "Agreement") is entered into as of that date set forth on the signature page hereto (the "Effective Date"), by and between City of Grand Island ("Covered Entity") and **Regional Care, Inc.** ("Business Associate"). Covered Entity and Business Associate are sometimes hereinafter referred to individually as "Party" and collectively as "Parties."

RECITALS:

A. Covered Entity and Business Associate have an existing relationship. Covered Entity will make available and/or transfer to Business Associate certain Protected Health Information (defined below), in conjunction with the performance of a function or activity that is being provided by Business Associate to Covered Entity, which is confidential and must be afforded special treatment and protection under the Privacy Rule (defined below) and the Security Rule (defined below), including the amendments to such rules contained in the HITECH Act (defined below).

B. Business Associate will have access to and/or receive from Covered Entity certain Protected Health Information that can be used or disclosed only in accordance with this Agreement, the Privacy Rule and the Security Rule.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Covered Entity and Business Associate agree as follows:

1. **Definitions.** Terms used, but not otherwise defined, in this Agreement have the same meaning as those ascribed to the terms in the Health Insurance Portability and Accountability Act of 1996 (as amended by the Health Information Technology for Economic and Clinical Health Act, Subtitle D of Title XIII of Division A of the American Recovery and Reinvestment Act of 2009 (the "HITECH Act")), and the regulations promulgated thereunder as set forth in the Code of Federal Regulations ("C.F.R.") at Title 45, Part 160, Part 162 and Part 164, and other applicable laws (collectively, "HIPAA"). In addition, the following terms shall have the following meanings:

1.1. "Breach" means the unauthorized acquisition, access, use or disclosure of Protected Health Information in a manner not permitted by the Privacy Rule which compromises the security or privacy of the Protected Health Information, as described in 45 C.F.R. 164.402.

1.2. "Compliance Date" means, in each case, the date by which compliance is required under the referenced provision of the HITECH Act and/or its implementing regulations, as applicable; provided that, in any case where the Compliance Date occurs prior to the Effective Date of this Agreement, the Compliance Date shall mean the Effective Date.

1.3. "Electronic Health Record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

1.4. "Electronic Protected Health Information" shall mean individually identifiable health information that is transmitted or maintained by electronic media as described in HIPAA.

1.5. "HHS" shall mean the U.S. Department of Health and Human Services.

1.6. "Individual" shall mean the person who is the subject of the Protected Health Information, and has the same meaning as the term "individual" is defined by HIPAA, and shall include a personal representative in accordance with 45 C.F.R. 164.502(g).

1.7. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information, C.F.R. at Title 45, Parts 160 and 164.

1.8. "Protected Health Information" shall have the same meaning as the term "protected health information" as described in HIPAA, limited to the information created or received by Business Associate from, or on behalf of, Covered Entity.

1.9. "Required By Law" shall have the same meaning as the term "required by law" in HIPAA.

1.10. "Secretary" shall mean the Secretary of HHS or his or her designee.

1.11. "Security Rule" shall mean the Standards for the Security of Electronic Protected Health Information, C.F.R. at Title 45, Parts 160, 162 and 164.

1.12. "Unsecured Protected Health Information" has the same meaning as the term "Unsecured protected health information" as defined in Section 13402 of the HITECH Act and 45 C.F.R. 164.402.

2. Permitted Uses and Disclosures by Business Associate.

2.1. General Uses and Disclosures. 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, Covered Entity if such use or disclosure by Business Associate complies with the Privacy Rule's minimum necessary policies and procedures required of Covered Entity (and/or Business Associate as of February 17, 2010), and if such use or disclosure of Protected Health Information would not violate the Privacy Rule or the Security Rule if done by Covered Entity (and/or Business Associate as of February 17, 2010).

2.2. Limits on Uses and Disclosures. Business Associate hereby agrees that Business Associate shall be prohibited from using or disclosing the Protected Health

Information provided or made available by Covered Entity for any purpose other than as expressly permitted, or required by this Agreement, or Required by Law.

2.3. Use for Management, Administration, and Legal Responsibilities. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities.

2.4. Disclosure for Management, Administration, and Legal Responsibilities. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities, provided that:

- (a) The disclosure is Required by Law; or
- (b) Business Associate obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that (i) the Protected Health Information 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 (ii) the person to whom the Protected Health Information is disclosed agrees to notify Business Associate within twenty-four (24) hours of the date of any Breach with respect to Unsecured Protected Health Information such person received from Business Associate.

3. Prohibited Uses and Disclosures. Business Associate shall not:

- (a) Make or cause to be made any marketing communication about a product or service that is prohibited by Section 13406(a) of the HITECH Act as of its Compliance Date;
- (b) Make or cause to be made any written fundraising communication that is prohibited by Section 13406(b) of the HITECH Act as of its Compliance Date;
- (c) Disclose Protected Health Information to a health plan for payment or health care operations (as defined under the Privacy Rule) purposes if Covered Entity has advised Business Associate (or the Individual has notified Business Associate directly) that the Individual has (i) requested this special restriction, and (ii) paid out-of-pocket in full for the health care item or service to which the Protected Health Information solely relates, in accordance with Section 13405(a) of the HITECH Act as of its Compliance Date; or
- (d) Directly or indirectly receive remuneration in exchange for Protected Health Information created, received, or maintained in connection with Business Associate's relationship with Covered Entity in accordance with Section 13405(d) of the HITECH Act as of its Compliance Date, except as otherwise permitted by the HITECH Act; provided, however, that this prohibition shall not affect payment by Covered Entity to Business Associate.

4. **Business Associate Obligations.**

4.1. **Appropriate Safeguards.** Business Associate will establish and maintain reasonable and appropriate administrative, physical and technical safeguards to:

(a) Prevent the use or disclosure of the Protected Health Information, other than as such use or disclosure is permitted by this Agreement; and

(b) Protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity.

4.2. **Security Rule.** Business Associate shall comply with the policies and procedures and documentation requirements of the Security Rule set forth in 45 C.F.R. 164.308, 45 C.F.R 164.310, 45 C.F.R 164.312 and 45 C.F.R 164.316 as required by Section 13401(a) of the HITECH Act as of its Compliance Date.

4.3. **Limited Data Set or Minimum Necessary.** Business Associate (and Business Associate's subcontractors or agents) shall request, use, and disclose only a limited data set (as defined in 45 C.F.R. 164.514(e)(2)), or, if needed, the minimum necessary amount of Protected Health Information necessary to accomplish the purpose of the request, use, or disclosure, as required by Section 13405(b) of the HITECH Act as of its Compliance Date.

4.4. **Reports of Improper Use, Disclosure or Security Incidents.** Business Associate hereby agrees that it shall report, to Covered Entity any:

(a) Use or disclosure of Protected Health Information not provided for or allowed by this Agreement; or

(b) Security incidents in regard to the Electronic Protected Health Information of which Business Associate becomes aware.

4.5. **Subcontractors and Agents.** Business Associate will use commercially reasonable efforts to ensure that any agent, including a subcontractor, to whom Business Associate provides Protected Health Information, created or received by Business Associate on behalf of Covered Entity, agrees (or has agreed) to:

(a) The same restrictions and conditions that apply to Business Associate in this Agreement to such Protected Health Information; and

(b) Implement reasonable and appropriate safeguards to protect the Electronic Protected Health Information.

4.6. **Right of Access to Protected Health Information.** Except as otherwise limited in this Agreement, Business Associate hereby agrees to provide access to Protected Health Information in a Designated Record Set (if applicable and as defined in HIPAA) to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. 164.524, at the written request of Covered Entity. If Business

Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill Covered Entity's obligations under the HITECH Act.

4.7. Amendments to Protected Health Information. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set, if applicable, that Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526, at the request of Covered Entity or an Individual, and in a reasonable time and manner. If any Individual requests an amendment of Protected Health Information directly from Business Associate (or Business Associate's subcontractors or agents), Business Associate will notify Covered Entity following the request. Any approval or denial of amendment of Protected Health Information maintained by Business Associate (or Business Associate's subcontractors or agents) shall be the responsibility of Covered Entity.

4.8. Access to Books and Records. Except as otherwise limited in this Agreement, Business Associate agrees to make its internal policies, procedures, practices, books and records relating to the use, disclosure and safeguarding of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary or Covered Entity, in a reasonable time and manner, for purposes of the Secretary's determining Covered Entity's compliance with the Privacy Rule and the Security Rule.

4.9. Documentation of Disclosures. 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.

4.10. Provide Accounting. Except as otherwise limited in this Agreement, Business Associate agrees to provide to Covered Entity or an Individual, in a reasonable time and manner, information collected in accordance with Section 4.9 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 Section 13405(c) of the HITECH Act as of its Compliance Date. In the event that the request for an accounting is delivered directly to Business Associate (or Business Associate's subcontractors or agents), Business Associate shall forward a copy of the request to Covered Entity. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested.

4.11. Mitigation Procedures. Business Associate agrees 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.

4.12. Notification of Breach. Except as otherwise provided under the HITECH Act, Business Associate agrees to notify Covered Entity not later than sixty (60) days following the date of discovery of a Breach of Unsecured Protected Health Information as follows:

(a) A Breach shall be deemed discovered by Business Associate when Business Associate actually knows of the Breach or, by exercising reasonable diligence, would have known of the Breach; and

(b) The notification required by this Section 4.12 shall be made in accordance with Section 15 and shall include, to the extent possible, (i) the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach, (ii) a brief description of what happened, including the date of the Breach and the date of the Business Associate's discovery of the Breach, if known, (iii) a description of the types of Unsecured Protected Health Information involved in the Breach, (iv) any steps affected Individuals should take to protect themselves from potential harm resulting from the Breach, (v) a brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against further Breaches, and (vi) contact procedures for affected Individuals, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.

5. **Covered Entity Obligations.**

5.1. **Provide Notice.** Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. 164.520, as well as any changes to such notice, in a reasonable time and manner, when such copy of the notice or amended notice is required for compliance with the Privacy Rule.

5.2. **Provide Changes of Authorization or Permission.** Covered Entity shall provide, in writing and in a reasonable time and manner, Business Associate with any changes in, or revocation of, authorization or permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

5.3. **Provide Restrictions.** Covered Entity shall notify Business Associate, in writing and in a reasonable time and manner, of any restrictions to the use or disclosure of Protected Health Information changing Business Associate's obligations that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522.

5.4. **Permissible Requests by Covered Entity.** Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule, the Security Rule, or this Agreement if done by Covered Entity.

6. **Term.** The term of this Agreement shall commence as of the Effective Date, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity in compliance with Section 9 of this Agreement.

7. **Termination for Cause.**

7.1. **By Covered Entity.** Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall provide written notice of such breach to Business Associate and provide an opportunity for Business Associate to cure the breach or end the violation, and if Business Associate does not cure the breach or end the violation within thirty (30) business days from the date Business Associate receives the written notice referred to above from Covered Entity, Covered Entity may immediately terminate this Agreement. Covered Entity may terminate this Agreement immediately without opportunity for cure if Business Associate and Covered Entity agree that cure is not reasonably possible or if Covered Entity deems such immediate termination to be appropriate under the circumstances.

7.2. **By Business Associate.** In accordance with Section 13404 of the HITECH Act as of its Compliance Date, if Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of the Covered Entity's obligations under this Agreement, Business Associate must take reasonable steps to cure the breach or end the violation. If Business Associate is unsuccessful, Business Associate shall terminate this Agreement, if feasible, or if termination is not feasible, Business Associate will report the problem to the Secretary. Business Associate shall provide notice to Covered Entity of any pattern of activity or practice of Covered Entity that Business Associate believes constitutes a material breach or violation of Covered Entity's obligations under this Agreement following discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

8. **Special Termination.** In the event that any federal, state, or local law or regulation currently existing or hereinafter enacted, or any final or non-appealable construction or interpretation of such law or regulation (whether federal, state, or local) or enforcement of such laws or regulations hereinafter occurs that makes performance of this Agreement impossible or illegal, the Parties mutually agree to enter into a modification of this Agreement to make substantial performance of this Agreement possible. However, should the Parties be unable to agree upon an appropriate modification to comply with such requirements following thirty (30) days of good faith negotiations, either Party may give written notice to immediately terminate this Agreement.

9. **Effect of Termination.**

9.1. Except as otherwise limited in this Agreement, and except as provided in Section 9.2 of this Agreement, upon termination of this Agreement, for any reason, Business Associate hereby agrees to return all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, or, to the extent authorized by Covered Entity, destroy such Protected Health Information. This provision shall apply to 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.

9.2. Except as otherwise limited in this Agreement, in the event that Business Associate determines that returning or as authorized by Covered Entity destroying the

Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction of the Protected Health Information not feasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is not feasible, 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 not feasible, for so long as Business Associate maintains such Protected Health Information.

10. **Indemnification.**

10.1. **Indemnification by Business Associate.** Except as otherwise limited in this Agreement, Business Associate shall indemnify and hold harmless Covered Entity against any claims, liabilities, damages, and expenses, including reasonable attorneys' fees, incurred by Covered Entity in defending or compromising actions brought against Covered Entity arising out of or related to the acts or omissions of Business Associate or its employees in connection with Business Associate's negligent or fraudulent performance of Business Associate's applicable duties under this Agreement. This indemnity shall be in proportion to the amount of responsibility found attributable to Business Associate.

10.2. **Indemnification by Covered Entity.** Except as otherwise limited in this Agreement, Covered Entity shall indemnify and hold harmless Business Associate against any claims, liabilities, damages, and expenses, including reasonable attorneys' fees, incurred by Business Associate in defending or compromising actions brought against Business Associate arising out of or related to the acts or omissions of Covered Entity or its employees in connection with Covered Entity's negligent or fraudulent performance of Covered Entity's applicable duties under this Agreement. This indemnity shall be in proportion to the amount of responsibility found attributable to Covered Entity.

11. **Survival of Obligations.** Except as otherwise limited in this Agreement, termination of this Agreement shall not relieve either Party from fulfilling any obligation under this Agreement, including, but not limited to, Sections 9 and 10 hereof, or any other agreement between the Parties that, at the time of termination, has already accrued to the other Party or which thereafter may accrue with respect to any act or omission that occurred prior to such termination.

12. **Disputes.** The Parties shall endeavor in good faith to resolve among themselves any dispute that may arise regarding this Agreement or any other agreement between them. If not so resolved, then the Parties may mutually decide to resolve the specific dispute or specific category of disputes by the use of a mediator which will be selected by the mutual agreement of the Parties; or, if the Parties mutually agree after the specific dispute or specific category of disputes are identified, the dispute(s) shall be settled pursuant to arbitration as provided by the Nebraska Uniform Arbitration Act; or either Party independently shall have the right to litigate any dispute(s) in any appropriate court in the State of Nebraska as described below in Section 13 if a mutual agreement to mediate or submit the dispute(s) to arbitration is not entered into after the dispute(s) is/are identified.

13. **Governing Law, Venue and Consent to Jurisdiction.** This agreement, and the rights, remedies, obligations, and duties of the parties under this agreement, shall be governed by, construed in accordance with, and enforced under the laws of the State of Nebraska.

14. **Binding Nature and Assignment.** This Agreement shall be binding on the Parties hereto and their successors and assigns, but neither Party may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.

15. **Notices.**

15.1. Whenever under this Agreement one Party is required to give notice to the other, such notice shall be deemed given if in writing to the address set forth below (or at such other address as may be designated by the Parties from time to time in accordance with this Section 15), and shall be either (i) personally delivered, (ii) mailed by certified mail, postage prepaid with return receipt requested, (iii) delivered by overnight express delivery service or same-day local courier service, or (iv) delivered by telex or facsimile transmission to the address set forth below, or at such address as may be designated by the Parties from time to time in accordance with this Section 15.

If to Covered Entity:	Address:	_____

	Attention:	_____
	Title:	_____
	Phone Number:	_____
	Facsimile Number:	_____

If to Business Associate:	Address:	Regional Care, Inc.
		905 West 27 th Street
		Scottsbluff, NE 69361
	Attention:	Steve Hetzel
	Title:	President
	Phone Number:	308-635-2260
	Facsimile Number:	308-635-2018

15.2. Notices delivered personally, by courier, or by facsimile shall be deemed communicated as of actual receipt. Mailed notices shall be deemed communicated as of 10:00 a.m. on the third business day after mailing. Any Party may change such Party's address for notice under this Agreement by giving prior written notice to the other Party of such change in the manner provided in this Section 15.

16. **Cooperation.** Both Business Associate and Covered Entity acknowledge that mutual cooperation and assistance is essential to each Party's performance under this

Agreement; therefore, it will be the duty of both Parties to make all good faith efforts to fully cooperate in the execution of this Agreement.

17. **Headings.** The headings of this Agreement are inserted for convenience only and are not to be considered in the interpretation of this Agreement. They shall not in any way limit the scope or modify the substance or context of any sections of this Agreement.

18. **Force Majeure.** Neither Party shall be liable or be deemed in breach of this Agreement for any failure or delay of performance, which results, directly or indirectly, from acts of God, civil, or military authority, public disturbance, accidents, fires, or any other cause beyond the reasonable control of either Party, and such nonperformance shall not be grounds for termination.

19. **Attorneys' Fees.** Except as otherwise limited in this Agreement, if any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, misrepresentation, or injunctive action in connection with any of the provisions of this Agreement, each Party shall bear their own legal expenses and the other cost incurred in that action or proceeding.

20. **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule or the Security Rule means the section as in effect or as amended, and for which compliance is required.

21. **Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any third party beneficiary rights in any person or entity.

22. **Counterparts.** This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Faxed copies of manually executed signature pages to this Agreement shall be fully binding and enforceable without the need for delivery of the original manually executed signature page.

23. **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as part of this Agreement a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

24. **Waivers.** The failure of a Party at any time or times to require performance of any provision of this Agreement shall in no manner affect such Party's right at a later time to enforce such provision. No waiver by a Party of any provision or breach of this Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver in other any instance.

25. **Relationship.** Business Associate is acting as an independent contractor of Covered Entity with respect to this Agreement. Nothing in this Agreement shall create or be deemed to create the relationship of employer/employee, partners, joint ventures, or principal-agent between the Parties. Except as otherwise set forth in this Agreement, (i) no Party shall have any authority to assume or create any obligation or responsibility whatsoever, express or implied, on behalf or in the name of the other Party or to bind the other Party in any manner whatsoever and (ii) no Party shall make any representation, warranty, covenant, agreement, or commitment on behalf of the other Party.

26. **Amendment.** Except as otherwise limited in this Agreement, the Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA and the HITECH Act. No changes in or additions to this Agreement shall be recognized unless incorporated herein by written amendment by the Parties, such amendment(s) to become effective on the date stipulated in such amendment(s). No discharge of obligations arising under this Agreement shall be valid unless in writing and executed by the Party against whom such discharge is sought to be enforced.

27. **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with the Privacy Rule and the Security Rule.

(Signatures begin on following page)

IN WITNESS WHEREOF, Business Associate and Covered Entity have caused this Agreement to be signed and delivered by their duly authorized representatives, effective as of the ____ day of _____, 20__.

COVERED ENTITY:

By: _____
Title: _____
Print Name: _____

BUSINESS ASSOCIATE:

By: Stephen W. Hetzel
Title: President
Print Name: Stephen W. Hetzel



51669



Please fill in your Client Name and 12 digit TASC Client ID and
Sign and fax all pages of the agreement to 608-245-3623

CLIENT NAME: City of Grand Island

CLIENT ID:

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is made this _____ day of _____, 2010, by and between City of Grand Island ("Covered Entity") and Total Administrative Services Corporation, a Wisconsin corporation ("Business Associate").

RECITALS

WHEREAS, Covered Entity is a group health plan ("Plan") and wishes to engage the services of Business Associate with respect to certain administrative aspects of the Plan as more specifically set forth in a Service Level Agreement ("SLA");

WHEREAS, Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of the SLA, some of which may constitute Protected Health Information ("PHI") (defined below).

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the SLA in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the "HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

WHEREAS, as part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entity to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and contained in this Agreement.

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

The general terms and conditions attached hereto are incorporated herein and deemed part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.

COVERED ENTITY:

BUSINESS ASSOCIATE:
**TOTAL ADMINISTRATIVE
SERVICES CORPORATION**

By: _____

By: _____

Print Name: _____

Print Name: Brad Hoffman

Title: _____

Title: Director - Customer Service

TERMS AND CONDITIONS

1. Definitions

- a. **Breach** shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].
- b. **Business Associate** shall mean Total Administrative Services Corporation.
- c. **Covered Entity** shall mean the party identified above.
- d. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- e. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- g. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
- h. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- i. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- j. **Protected Health Information** or **PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- k. **Protected Information** shall mean PHI provided by Covered Entity to Business Associate or created or received by Business Associate on Covered Entity's behalf.
- l. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- m. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

2. Obligations of Business Associate

- a. **Permitted Uses.** Business Associate shall not use Protected Information except for the purpose of performing Business Associate's obligations under the SLA and as permitted under the SLA and this Agreement. Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by Covered Entity. However, Business Associate may use Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; or (iii) for Data Aggregation purposes for the Health Care Operations of Covered Entity [45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].
- b. **Permitted Disclosures.** Business Associate shall not disclose Protected Information except for the purpose of performing Business Associate's obligations under the SLA and as permitted under the SLA and this Agreement. Business Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by Covered Entity. However, Business Associate may disclose Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity. If Business Associate discloses Protected Information to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) an agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].

- c. **Prohibited Uses and Disclosures.** Business Associate shall not use or disclose Protected Information for fundraising or marketing purposes. Business Associate shall not disclose Protected Information to a health plan for payment or health care operation purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a)]. Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2); however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the SLA.
- d. **Appropriate Safeguards.** Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the SLA or this Agreement, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316 [42 U.S.C. Section 17931].
- e. **Reporting of Improper Access, Use or Disclosure.** Business Associate shall report to Covered Entity any access, use or disclosure of Protected Information not permitted by the SLA and this Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than 60 calendar days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].
- f. **Business Associate's Agents.** Business Associate shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI and implement the safeguards required by subparagraph d above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)].
- g. **Access to Protected Information.** Within thirty (30) days of receiving a written request from Covered Entity, Business Associate shall make Protected Information maintained by Business Associates or its agents or subcontractors in Designated Record Sets available to Covered Entity, in reasonable time and manner, for inspection and copying to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).
- h. **Amendment of PHI.** Business Associate or its agents or subcontractors shall, in a reasonable time and manner, make Protected Information available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from Business Associate or its agents or subcontractors, Business Associate shall notify Covered Entity of the request. Any approval or denial of an amendment of Protected Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of Covered Entity [45 C.F.R. Section 164.504(e)(2)(ii)(F)].
- i. **Accounting Rights.** Business Associate and its agents or subcontractors shall, in a reasonable time and manner, make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to, 42 U.S.C. Section 17935(c). In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall forward it to Covered Entity. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Information except as set forth in Sections 2.b. of this Agreement [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528]. The provisions of this subparagraph i shall survive the termination of this Agreement.
- j. **Governmental Access to Records.** Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of

determining Business Associate and/or Covered Entity's compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)].

- k. **Minimum Necessary.** Business Associate (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)(3)]. Business Associate and Covered Entity acknowledge and agree that the definition of "minimum necessary" is in flux and shall keep themselves informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- l. **Notification of Breach.** During the term of the SLA, Business Associate shall notify Covered Entity, as soon as practicable after discovery, of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which Business Associate becomes aware.
- m. **Breach Pattern or Practice by Covered Entity.** Pursuant to 42 U.S.C. Section 17934(b), if Business Associate knows or learns of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity's obligations under the SLA, this Agreement or other arrangement, Business Associate shall take reasonable steps to cure the breach or end the violation or cause Covered Entity to cure the breach or end the violation. If the steps are unsuccessful, Business Associate is legally obligated to terminate the SLA or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS. Notwithstanding anything to the contrary in the SLA, Business Associate shall not be liable for any damages suffered by Covered Entity as a result of the termination of the SLA to satisfy this obligation.

3. **Obligations of Covered Entity.** Covered Entity shall promptly notify Business Associate, in writing and in a timely manner, of any of the following:

- a. Changes in the form of notice of privacy practices ("NPP") that Covered Entity provides to individuals pursuant to 45 C.F.R. Section 164.520, and provide Business Associate a copy of the NPP currently in use.
- b. Changes in, or withdrawal of, the consent or authorization provided to Covered Entity by individuals pursuant to 45 C.F.R. Sections 164.506 or 164.508.
- c. Any arrangements permitted or required of Covered Entity that may impact in any manner the use and/or disclosure of Protected Information by Business Associate under the SLA or this Agreement, including but not limited to, restrictions on use and/or disclosure of Protected Information as provided for in 45 C.F.R. Sections 164.522.

4. **Termination**

- a. **Material Breach.** In the event that Covered Entity determines Business Associate has materially breached this Agreement, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation. If Business Associate does not cure the breach or end the violation within a reasonable time, Covered Entity may terminate this Agreement. [45 C.F.R. Section 164.504(e)(2)(iii)].
- b. **Effect of Termination.** Upon termination of the Contract for any reason, Business Associate shall, to the extent feasible, return or destroy all Protected Information that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by Business Associate, Business Associate shall continue to extend the protections of Section 2 of this Agreement to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible [45 C.F.R. Section 164.504(e)].

5. **Amendment to Comply with Law.** The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the SLA or this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. Upon the request of Business Associate, Covered Entity agrees to promptly, and in no case later than thirty (30) days from Business Associate's request, enter into an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws.

6. **No Third-Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

7. **Effect on SLA.** Except as specifically required to implement the purposes of this Agreement, or to the extent inconsistent with this Agreement, all terms of the SLA shall remain in force and effect.

8. **Interpretation.** This Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

9. **Counterparts.** This Agreement may be executed and delivered (including by facsimile or Portable Document Format (pdf) transmission) in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the parties and delivered to the other party. Any such facsimile documents and signatures shall, subject to applicable legal requirements, have the same force and effect as manually-signed originals and shall be binding on the parties hereto.

RESOLUTION 2010-57

WHEREAS, the City of Grand Island has a business associate agreement with Regional Care, Inc. (RCI) to provide TPA services for the City's health and dental plan; and

WHEREAS, the City of Grand has a business associate agreement with TASC to administer the City's Section 125 Cafeteria Plan; and

WHEREAS, Congress enacted the Health Information Technology for Economic and Clinical Health ("HITECH") Act in 2009 which amended the HIPAA provisions of 1996; and

WHEREAS, the City of Grand Island must amend its business associate agreement with Regional Care Inc. (RCI) and TASC to comply with HIPPA;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, to enter into an amended and updated business associate agreement with RCI to comply with HIPAA regulations.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, February 23, 2010.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk