

## APPENDIX B

### CITY OF TRAVERSE CITY

#### BUSINESS ASSOCIATE AGREEMENT

This Agreement is entered into on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between \_\_\_\_\_ (“Business Associate”) and City of Traverse City (“City” or “Covered Entity”).

**WHEREAS**, by virtue of the services that Business Associate performs for the Covered Entity, Business Associate is a “business associate,” as that term is defined at 45 CFR ' 160.103;

**WHEREAS**, in connection with Business Associate’s provision of services Covered Entity may disclose to Business Associate Protected Health Information as defined below, and

**WHEREAS**, pursuant to the final regulations promulgated to the Administrative Simplification Subtitle of the Health Insurance Portability and Accountability Act of 1996, Business Associate agrees to undertake certain responsibilities as required by those Regulations,

**NOW, THEREFORE**, it is agreed as follows:

**1. Definitions.** When used in this Agreement, the following terms have the following meanings:

(a) “Business Associate” shall mean the Business Associate named above and shall include all successors and assigns, affiliates, subsidiaries (as applicable), and related companies of the Business Associate.

(b) “EDI Rule” shall mean the Standards for Electronic Transactions as set forth at 45 CFR Parts 160, Subpart A and 162, Subpart A and I through R.

(c) “HIPAA” means the Health Insurance Portability and Accountability Act of 1996.

(d) “Individual” shall have the same meaning as the term “Individual” in 45 CFR ' 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR ' 164.502(g).

(e) “Privacy Rule” shall mean the Standards for Privacy of Individual Identifiable Health Information as set forth at 45 CFR Part 160 and 164 Subparts A and E.

(f) “Protected Health Information (PHI)” shall have the same meaning as the term

“protected health information” in 45 CFR ' 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(g) “Required by Law” shall have the same meaning as the term “required by Law” in 45 CFR ' 164.501.

(h) “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

(i)“Security Rule” shall mean the Security Rule as contained in 45 CFR ' 160, 162, and 164.

Terms used, but not defined, in this Agreement shall have the same meaning as those terms in 45 CFR ' ' 164.103 and 164.501.

## **2. Obligations and Activities of Business Associate Regarding PHI.**

(a) Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law.

(b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.

(c) Business Associate agrees to report to Covered Entity, as soon as reasonably practicable, any use or disclosure of PHI not provided for by this Agreement.

(d) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(e) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designed by Covered Entity or, as directed by Covered Entity, to an Individual in order meet the requirements under 45 CFR ' 164.524.

(f) Business Associate agrees to make any amendment to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR ' 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.

(g) Business Associate agrees to make internal practices books, and records relating to the use and disclosure of PHI available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a reasonable time and manner designated by the Covered Entity or Secretary, for purposes of the Secretary determining Covered Entity’s compliance with the Privacy Rule. Business Associate shall immediately notify Covered Entity upon receipt or notice of any request by the Secretary to conduct an investigation with respect to PHI received from the Covered Entity.

(h) Business Associate agrees to document any disclosures of PHI 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 PHI in accordance with 45 CFR ' 164.528.

(i) Business Associate agrees to provide to Covered Entity or an Individual, in a reasonable time and manner designated by Covered Entity, information collected in accordance with paragraph (h) above of the Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR ' 164.528.

(j) Business Associate agrees to use or disclose PHI pursuant to the request of Covered Entity; provided, however, that Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

(k) Business Associate agrees to abide by all applicable provisions of the Security Rule.

(l) Business Associate agrees to the use and disclosure limitations of the Privacy Rules, including the minimum necessary principle and, if applicable, de-identification standards.

(m) Business Associate agrees to provide a copy of ePHI to a covered entity when requested.

(n) Business Associate agrees to not sell PHI, which includes receiving financial remuneration, financial or otherwise, directly or indirectly, from or on behalf of the recipient in exchange for PHI, except as authorized by the individual or allowed by HIPAA.

(o) Business Associate agrees to have and maintain appropriate agreements in place with subcontractors that access PHI, which include specific provisions mandated by HIPAA.

**3. Permitted Uses and Disclosures of Protected Health Information by Business Associate.**

(a) Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform the functions, activities, or services for, or on behalf of, Covered Entity as previously agreed to by the parties provided that such use or disclosure would not violate the Privacy Rule if done by the Covered Entity.

(b) Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate to carry out the legal responsibilities of the Business Associate.

(c) Except as otherwise limited in this Agreement, Business Associate may disclose PHI if such disclosure is Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person agrees to notify Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

(d) Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 CFR ' 164.504(e)(2)(i)(B).

**4. Obligations of Covered Entity Regarding PHI.**

(a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR ' 164.520, as well as any changes to such notice.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, authorization by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and discloses.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR ' 164.522.

(d) Covered Entity and its representatives shall be entitled on ten (10) business days prior written notice to Business Associate, to audit Business Associate from time-to-time to verify Business Associate's compliance with the terms of this Agreement. Covered Entity shall be entitled and enabled to inspect the records and other information relevant to Business Associate's compliance with the terms of this Agreement. Covered Entity shall conduct its review during the normal business hours of Business Associate, as the case may be, and to the extent feasible without unreasonably interfering with such entity's normal operations.

**5. Compliance with EDI Rule and other Aspects of Administration Simplification Regulations.**

Business Associate agrees that, on behalf of Covered Entity, it will perform any transaction for which a standard has been developed under the EDI Rule that Business Associate could reasonably be expected to perform in the ordinary course of its functions on behalf of Covered Entity.

Business Associate agrees that it will comply with all applicable EDI standards no later than the date that the EDI Rule becomes effective with regard to Business Associate. Business Associate further agrees that it will use its best efforts to comply with all applicable regulatory provisions in addition to the EDI Rule and the Privacy Rule that are promulgated pursuant to the Administrative Simplification Subtitle of HIPAA, no later than the date such provisions become effective with regard to Business Associate.

**6. Amendment.**

The parties agree to take any action necessary to amend the Agreement from time to time as is necessary for them to comply with the requirements of the Administrative Simplification Subtitle HIPAA. The parties may agree to amend this Agreement from time to time in any other respect that they deem appropriate. This Agreement shall not be amended except by written instrument executed by Covered Entity and Business Associate.

**7. Term and Termination.**

(a) *Term.* Except as set forth in Section 5, this Agreement shall be effective as of the date first above written and shall terminate when the Business Associate is no longer performing a service for the City involving the use or disclosure of PHI or as otherwise provided by this Agreement.

(b) *Termination for Cause.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach. If Business Associate does not cure the breach within 30 days of the date that Covered Entity provides notice of such breach to Business Associate, Covered Entity shall have the right to terminate this Agreement, the Services Agreement, or both of them, by providing 30 days advance written notice of such termination to Business Associate.

Covered Entity may terminate the Agreement without penalty or recourse to Covered Entity if Covered Entity determines that Business Associate has violated a material term of the Agreement.

Upon Business Associate's knowledge of a material breach by Covered Entity, for example, if Covered Entity makes illegal demands on Business Associate, Business Associate shall provide an opportunity for Covered Entity to cure the breach. If Covered Entity does not cure the breach within 30 days of the date that Business Associate provides notice of such breach to Covered Entity, Business Associate shall have the right to terminate this Agreement, the Services Agreement, or both of them, by providing 30 days advance written notice of such termination to Covered Entity.

(c) *Effect of Termination.*

(1) Except as provided in subparagraph (2) next below, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(2) If Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible, nothing that regular backup retention media could prolong the maintenance of such records. Upon mutual agreement of the parties that return or destruction of PHI is infeasible; Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

(3) The respective rights and obligations of Business Associate under this paragraph (c) shall survive the termination of this Agreement.

**8. Indemnification.**

Business Associate shall indemnify and hold harmless Covered Entity from and against any and all costs, expenses, claims, demands, causes of action, damages, reasonable attorneys' fees and judgments that arise out of or that may be imposed upon, incurred by, or brought against Covered Entity as a result of a breach of this Agreement or any violation of the Administrative Simplification Subtitle of HIPAA by Business Associate.

The indemnification obligations provided for in this Section will commence on the effective date of this Agreement and will survive its termination.

**9. Notices.**

All notices, requests, consents and other communications hereunder will be in writing, will be addressed to the receiving party's address set forth below or to such other address as a party may designate by notice hereunder, and will be either (i) delivered by hand, (ii) made facsimile transmission, (iii) sent by overnight courier, or (iv) sent by registered mail or certified mail, return receipt requested, postage prepaid.

If to the Covered Entity:

Organization Name: City of Traverse City  
To the Attention of: City Clerk, HIPAA Privacy Official  
Address: 400 Boardman Avenue  
Traverse City, MI, 49684  
Facsimile: (231) 922-4476

If to the Business Associate:

Organization Name: \_\_\_\_\_  
To the Attention of: \_\_\_\_\_  
Address: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**10. Severability.**

All parties intend this Agreement to be enforced as written. However, (i) if any portion or provision of this Agreement will to any extent be declared illegal or unenforceable by a duly authorized court having jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, will not be affected thereby, and each portion and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law; and (ii) if any provision, or part thereof, is held to be unenforceable because of the duration of such provision, the Covered Entity and the Business Associate agrees that the court making such determination will have the power to reduce the duration of such provision, and/or to delete specific words and phrases, and in its reduced form such provision will then be enforceable and will be enforced.

**11. Headings and Captions.**

The headings and captions of the various subdivisions of the Agreement are for convenience of reference only and will in no way modify, or affect the meaning or construction of any of the terms or provisions hereof.

**12. No Waiver of Rights, Powers and Remedies.**

No failure or delay by a party hereto in exercising any right, power or remedy under this Agreement, and no course of dealing between the parties hereto, will operate as a waiver of any such right, power or remedy of the party. No single or partial exercise of any right, power or remedy under this Agreement by a party hereto, nor any abandonment or discontinuance of steps to enforce any such right, power or remedy, will preclude such party from any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The election of any remedy by a party hereto will not constitute a waiver of the right of such party to pursue other available remedies. No notice to or demand on a party not expressly required under this Agreement will entitle the party receiving such notice or demand to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the party giving such notice or demand to any other or further action in any circumstances without such notice or demand. The terms and provisions of this Agreement may be waived, or consent for the departure therefrom granted, only by written document executed by the party entitled to the benefits of such terms or provisions. No such waiver or consent will be deemed to be or will constitute a waiver or consent with respect to any other terms or provisions of this Agreement, whether or not similar. Each such waiver or consent will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver or consent.

**13. Regulatory References.**

A reference in this Agreement to a section in the EDI Rule or the Privacy Rule means the referenced section or its successor, and for which compliance is required.

**14. Governing Law.**

This Agreement will be governed by and construed in accordance with federal laws and, to the extent applicable, the laws of the State of Michigan.

**15. Entire Agreement.**

This Agreement sets forth the entire understanding of the parties with respect to the subject matter set forth herein and supersedes all prior agreements, arrangements and communications, whether oral or written, pertaining to the subject matter hereof.

**16. Interpretation.**

Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Administrative Simplification Subtitle of HIPAA.

**17. Third Party Beneficiaries.**

This Agreement confers no rights or remedies on any third party, other than the parties to this Agreement and their respective successors and permitted assigns.

The parties have executed this Agreement as of the date first stated above.

**Business Associate**

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

Title: \_\_\_\_\_

**Covered Entity**

By: \_\_\_\_\_

Benjamin C. Marentette

Title: City Clerk/HIPAA Privacy Official