

TRUSTMARK LIFE INSURANCE COMPANY
(Amended for HIPAA Security as of April 20, 2005)
Lake Forest, Illinois

BUSINESS ASSOCIATE AGREEMENT

Effective Date: _____

I. PREAMBLE

Pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") of 1996, and its implementing regulation, the Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. 82,462 *et seq.* (Dec. 28, 2000), the Final Rule, (Aug. 14, 2002), and future amendments to the implementing Regulation, (hereinafter the "HIPAA Privacy Rule"), as well as other applicable federal and state privacy and confidentiality rules, _____ ("Covered Entity") and Trustmark Life Insurance Company ("Business Associate") (jointly "the Parties") wish to enter into an Agreement that addresses the requirements of the HIPAA Privacy Rule with respect to "business associates," as that term is defined in the HIPAA Privacy Rule.

Specifically, this Agreement is intended to ensure that the Business Associate will establish and implement appropriate safeguards (including certain administrative requirements) for "Protected Health Information" the Business Associate may create, receive, use, or disclose in connection with certain functions, activities, or services (collectively "services") to be provided by Business Associate to or on behalf of Covered Entity. The services to be provided by Business Associate are identified in a separate agreement ("Services Agreement") between the Parties.

The Parties acknowledge and agree that in connection with the services to be provided, Business Associate may create, receive, use or disclose Protected Health Information. Protected Health Information ("PHI"), which is defined in the Rule, includes individually identifiable health information that is created or received by a covered entity (provider, health plan, clearinghouse or insurer), a health authority, employer, school or university, maintained or transmitted in any form or medium, which relates to the past, present, or future (i) physical or mental health or condition of an individual; (ii) provision of health care to an individual; or (iii) payment for the provision of health care to an individual. PHI does not include summary health information or information that has been de-identified in accordance with the standards for de-identification provided for in the HIPAA Privacy Rule.

In connection with Business Associate's creation, receipt, use or disclosure of PHI as a Business Associate of the Covered Entity, Business Associate and Covered Entity agree as follows:

II. GENERAL TERMS AND CONDITIONS

- a. Definitions: All terms used in this Agreement shall have the meanings set forth in the HIPAA Privacy Rule, unless otherwise defined herein.
- b. Existing Services Agreements: All existing Services Agreements between the Covered Entity and Business Associate are subject to this Agreement and are hereby amended by this Agreement. In the event of conflict between the terms of any Services Agreement and this Agreement, the terms and conditions of this Agreement shall govern.
- c. Services Agreements: include any agreement and amendments thereto, written or oral, between Covered Entity and Business Associate that describe services to be provided in connection with Covered Entities' Covered Functions. Such Services Agreements include but are not limited to; vendor agreements with Preferred Provider Organizations, claim repricing organizations, or retainer agreements with law firms.

- d. Where provisions of this Agreement are different from those mandated by the HIPAA Privacy Rule, but are nonetheless permitted by the Rule, the provisions of the Agreement shall control.
- e. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Business Associates and the respective successors or assigns of the Business Associates, any rights, remedies, obligations, or liabilities whatsoever.

III. USE AND DISCLOSURE OF PHI

- a. Treatment, Payment and Operations: Business Associate agrees to create, receive, use, or disclose PHI only in a manner that is consistent with this Agreement or the HIPAA Privacy Rule and only in connection with providing the services to or on behalf of Covered Entity identified in any existing Services Agreement and amendments thereto. Accordingly, in providing services to or on behalf for the Covered Entity, the Business Associate, for example, will be permitted to use and disclose PHI for Treatment, Payment and Healthcare Operations consistent with the HIPAA Privacy Rule, without obtaining authorization.
- b. Other Permissible Uses and Disclosures: As permitted by 45CFR §164.504(e)(4) Business Associate also may use or disclose PHI it receives in its capacity as a Business Associate to the Covered Entity if:
 - i. the use relates to: (1) the proper management and administration of the Business Associate or to carry out legal responsibilities of the Business Associate, or (2) data aggregation services relating to the health care operations of the Covered Entity; or
 - ii. the disclosure of PHI received in such capacity may be made in connection with a function, responsibility, or service identified in (i)(1), *and* such disclosure is required by law *or* the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidential and the person agrees to notify the Business Associate of any breaches of confidentiality.

IV. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a. SubContractors: Business Associate represents to Covered Entity that [i] any disclosure it makes will be permitted or required under applicable laws, and [ii] that Business Associate will obtain reasonable assurances from any person or entity to whom Business Associate discloses the PHI that the PHI will be held confidentially and used or further disclosed only as required and permitted under the HIPAA Privacy Rule and other applicable laws, and [iii] any such person or entity agrees to be governed by the same restrictions and conditions contained in this Agreement, and that such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.
- b. Permissible Disclosures: Except as otherwise limited in this Agreement, Business Associate may disclose PHI to other Business Associates of the Covered Entity (i) as directed by the plan sponsor, or (ii) to perform its duties under the Service Agreement.
- c. Safeguards: Business Associate shall maintain safeguards as necessary to ensure that PHI is not used or disclosed except as provided for by this Agreement.
- d. Impermissible Use and Disclosure: [I] Business Associate shall report to Covered Entity within 5 days of knowledge of any use or disclosure of PHI that is in violation of this agreement and not permitted under the HIPAA Privacy Rule. [ii] Business Associate agrees to mitigate any harmful effect that is known to Business Associate of such impermissible use or disclosure of Protected Health Information.

- e. Accounting of Disclosures: Business Associate shall provide Covered Entity within 5 days of receipt of Covered Entity's request, the information necessary to provide an accounting of disclosures of PHI as provided for in C.F.R. § 164.528 of the HIPAA Privacy Rule.
- f. Access to PHI: Business Associate shall report to Covered Entity within 5 days of receipt of a request from an individual for access to PHI provided for in C.F.R. § 164.524 of the HIPAA Privacy Rule. Business Associate shall not respond to individual requesting Access to PHI without specific authorization of Covered Entity.
- g. Amendment of PHI: Business Associate shall report to Covered Entity within 5 days of receipt of a request from an individual for amendment to PHI. Business Associate shall not alter or amend PHI it receives from an individual or from Covered Entity without specific authorization by Covered Entity as provided for in C.F.R. § 164.526 of the HIPAA Privacy Rule.
- h. Disclosures required by Law: Business Associate may disclose PHI to Covered Entity for the purpose of reporting violations of law to appropriate Federal or State authorities, consistent with C.F.R. § 164.502.
- i. Access to HHS: Business Associate shall make available to the Covered Entity, HHS or its agents the Business Associate's internal practices, books and records relating to the use and disclosure of PHI as required in C.F.R. § 164.504 of the HIPAA Privacy Rule. Covered Entity will only exercise the right to request access from Business Associate if HHS had demanded access through Covered Entity.
- j. Business Associate, shall cooperate with Covered Entity to comply with the HIPAA Privacy Rule as well as other applicable federal and state privacy and confidentiality rules.
- k. Business Associate shall implement administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of ePHI that it creates, maintains or transmits on behalf of Covered Entity as required by 45 CFR Sec. 164.314;
- l. Business Associate shall insure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it;
- m. Business Associate shall report to Covered Entity any security incident of which it becomes aware;
- n. Service Agreement may be terminated if Covered Entity determines that Business Associate has violated a material term of any of these Agreements.

V. OBLIGATIONS OF COVERED ENTITY

- 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, or authorization by individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522.

VI. TERMINATION

- a. Termination for Cause. Covered Entity will provide Business Associate 10 days to cure any material breach of this Agreement. If Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, the Parties agree that Covered Entity shall have the right to terminate the Services Agreement for cause and without any penalty.
- b. If termination would cause irreparable business interruption or harm to customers of Covered Entity, or is otherwise not feasible, parties shall make all efforts reasonable to cure breach or mitigate harm to individuals caused by such breach. If this occurs, Covered Entity may report the situation to the Secretary of Health and Human Services.
- c. Return or Destruction of PHI: Upon the termination or expiration of this Agreement or the Services Agreement, Business Associate agrees to return the PHI to Covered Entity, destroy the PHI (and retain no copies), or further protect the PHI if return or destruction is not feasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, 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 infeasible, for so long as Business Associate maintains such Protected Health Information.

Covered Entity

Business Associate

Signed: _____

Signed: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**Trustmark Life Insurance Company
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Lake Forest, Illinois 60045**