BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT (“BAA”) is entered into effective the  
\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”) by and between Ventura County Medi-Cal Managed Care Commission doing business as Gold Coast Health Plan (“GCHP”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (“Business Associate”), each a “Party” and collectively the “Parties”.

RECITALS

1. GCHP is a Covered Entity as defined under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and is therefore subject to HIPAA and its implementing regulations, including the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Rule”), the Breach Notification Rule, and the Security Standards for the Protection of Electronic Protected Health Information (the “Security Rule”) codified at 45 C.F.R. Parts 160, 162, and 164 and Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH”) (collectively, HIPAA, the Privacy Rule, Security Rule, Breach Notification Rule, and HITECH and shall be referred to herein as the “HIPAA Rules”).
2. Business Associate performs Services for or on behalf of GCHP described in any underlying agreement or agreements between the parties (the “Underlying Agreement”) or in this BAA, and in performing said Services, Business Associate creates, receives, maintains, or transmits Protected Health Information.
3. GCHP and Business Associate intend to protect the privacy and provide for the security of PHI in compliance with the HIPAA Rules and other applicable laws.
4. GCHP and Business Associate wish to set forth their understandings with regard to the Use and Disclosure of PHI by Business Associate so as to comply with the HIPAA Rules.

AGREEMENTS

For valuable consideration received and the above referenced Recitals which are incorporated herein as set forth in full and the mutual conditions, terms and promises set forth in these agreements below, the parties agree as follows:

* 1. Defined Terms. Capitalized terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in the HIPAA Rules:
     1. “Breach” shall have the meaning given to such a term under 45 .C.F.R. § 164.402.
     2. “Protected Health Information” and “PHI” shall mean any Individually Identifiable Health Information received, created, transmitted, or maintained for or on behalf of GCHP by Business Associate, whether oral or recorded in any form or medium, that: (a) relates to the past, present or future physical or mental health or 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; (b) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (c) shall have the meaning given to such term under the Privacy Rule at 45 C.F.R. § 160.103. Protected Health Information includes electronic PHI or e-PHI.
     3. “Personal Information” and “PI” shall have the meaning of such a term under California Civil Code § 1798.29.
     4. “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, and shall have the meaning given such term under the Security Rule, including, but not limited to, 45 C.F.R. § 164.304.
     5. “Services” shall mean the services for or functions on behalf of GCHP performed by Business Associate pursuant to the Underlying Agreement or Agreements, or, if no such written agreements are in effect, then the services or functions performed by Business Associate as described in this BAA that constitute a Business Associate relationship, as set forth in 45 C.F.R. § 160.103.
     6. “State Breach” shall mean any unauthorized access, use, acquisition or disclosure of PI that would trigger a notification obligation under applicable state security breach notification laws.
  2. Obligations and Permitted Activities.

Business Associate agrees to the following:

* + 1. Applicability. That this BAA shall apply to all agreements between and among GCHP and Business Associate.
    2. Permitted Uses and Disclosures. Not to Use or Disclose PHI other than as permitted to perform the Services set forth in this BAA, any Underlying Agreement, or as Required by Law. Business may Use PHI for the proper management and administration of Business Associate, and to carry out the legal responsibilities of Business Associate. Business Associate may Disclose PHI for Business Associate’s proper management and administration or to carry out Business Associate’s legal responsibilities only if the Disclosure is Required by Law, or Business Associate obtains reasonable assurances from the person or organization 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 or organization, and the person or organization notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. Business Associate may perform Services, including Data Aggregation for the Health Care Operations purposes of GCHP, if required by any Underlying Agreement. Business Associate shall not de-identify PHI without the advance written permission of GCHP.
    3. Adequate Safeguards. To comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent Use or Disclosure of PHI other than as provided for by this BAA and any Underlying Agreement, and to develop, implement, maintain and use appropriate administrative procedures, and physical and technical safeguards, to preserve and protect the confidentiality, integrity and availability of electronic PHI.
    4. Non-Permitted Use or Disclosure. Without reasonable delay, and no later than forty-eight (48) hours after becoming aware, Business Associate shall notify GCHP of any Use or Disclosure of PHI or PI that is not permitted by this BAA, including Breaches or State Breaches, in accordance with the notice provisions herein.
    5. Security Incident. Business Associate shall notify GCHP about any Security Incident involving PHI or PI, no later than forty-eight (48) hours after Business Associate’s discovery of such incident, in accordance with the notice provisions herein. Notwithstanding the foregoing, Business Associate and GCHP acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and GCHP acknowledges and agrees that no additional notification to GCHP of such ineffective Security Incidents is required, as long as no such incident results in unauthorized access, Use or Disclosure of PHI or PI.
    6. Investigation. Business Associate shall investigate each Security Incident or non-permitted Use or Disclosure of PHI or PI that it discovers to determine whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach or State Breach. Business Associate shall take prompt corrective action and any action required by applicable state or federal laws and regulations relating to any such Security Incident or non-permitted Use or Disclosure. If Business Associate or GCHP determines that such Security Incident or non-permitted Use or Disclosure constitutes a Breach or State Breach, then Business Associate shall comply with the additional requirements of Section 2.(g) below, as applicable.
    7. Breach Report. Business Associate shall provide a written report to GCHP without unreasonable delay but no later than five (5) business days after discovery of the Breach or State Breach. To the extent that information is available to Business Associate, Business Associate’s written report to GCHP shall be in accordance with 45 C.F.R. §164.410(c). Business Associate shall cooperate with GCHP in meeting GCHP’s obligations under the HIPAA Rules and applicable State law with respect to such Breach or State Breach. GCHP shall have sole control over the timing and method of providing notification of such Breach or State Breach to the affected individual(s), the Secretary of the Department of Health and Human Services (the “Secretary”) and, if applicable, the media. Business Associate shall reimburse GCHP for its reasonable and actual costs and expenses in providing the notification, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, public relations costs, and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance) for affected individuals whose PHI or PI has or may have been compromised as a result of the Breach.
    8. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this BAA.
    9. Use of Subcontractors. In accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any of his agents or subcontractors that create, receive, maintain, or transmit PHI or PI agree to the same restrictions, conditions, and requirements as those that apply to Business Associate, through this BAA and any Underlying Agreement with respect to such PHI or PI.
    10. Availability of Internal Practices, Books, and Records to Government. Business Associate shall make its internal policies, procedures, and records related to the Use and Disclosure of PHI available to the Secretary, State regulatory authorities, and/or to GCHP upon request and in a time and manner designated by the Secretary or such State authorities, as necessary or required to assess Business Associate’s, subcontractors, or GCHP’s compliance with the HIPAA Rules or applicable State privacy or security law.
    11. Access. Business Associate shall, within ten (10) business days of a request by GCHP, make available PHI in a Designated Record Set on behalf of GCHP as necessary to satisfy GCHP’s obligations under 45 C.F.R. 164.524.
    12. Amendment. Business Associate shall, within ten (10) business days of a request by GCHP, make any amendments to such PHI in a Designated Record Set as directed or agreed to by GCHP pursuant to 45 C.F.R. 164.526, or take other measures as necessary to satisfy GCHP’s obligations under 45 C.F.R. 164.526.
    13. Accounting. Business Associate shall maintain and make available to GCHP the information required to provide an accounting of disclosures as necessary to satisfy GCHP’s obligations under 45 C.F.R. 164.528 within twenty (20) business days, including recording for each required accounting: (i) the disclosure date, (ii) the name and (if known) address of the person or entity to whom Business Associate made the disclosure, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose of the disclosure; and Business Associate shall have available for GCHP such disclosure information for the six (6) years preceding GCHP’s request for the disclosure information (except Business Associate need have no disclosure information for disclosures occurring before the Effective Date of this BAA)
    14. Delegated Responsibilities. To the extent Business Associate is to carry one or more of GCHP’s obligations(s) under Subpart E of 45 C.F.R. 164 under this BAA or any Underlying Agreement, comply with the requirements of Subpart E that apply to a Covered Entity in the performance of such obligations.
    15. Data Ownership. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI or PI.
    16. Minimum Necessary. Business Associate (and its Subcontractors) shall, to the extent practicable, limits its request, Use, or Disclosure of PHI to the minimum amount of PHI necessary to accomplish the purpose of the request, Use or Disclosure.
    17. Acknowledgement. Business Associate acknowledges that it is obligated by law to comply, and represents and warrants that it shall comply, with the HIPAA Rules. Business Associate shall comply with all applicable state privacy and security laws, to the extent that such state laws are not preempted by the HIPAA Rules.
  1. GCHP’s Obligations.
     1. GCHP shall not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under the Privacy Rule or the Security Rule if done by GCHP.
     2. GCHP shall make reasonable efforts not to provide Business Associate with more PHI than that which is minimally necessary for Business Associate to provide the Services.
     3. GCHP shall notify Business Associate of any restrictions on, or change in or withdrawal of the consent or authorization of an Individual regarding the Use or Disclosure of PHI to the extent that such change or withdrawal may affect Business Associate ‘s Use or Disclosure of PHI.
  2. Term and Termination.
     1. Term. This BAA shall be effective as of the date first written above, and shall terminate when all PHI is destroyed or returned to GCHP. If Business Associate determines, in accordance with subsection 4(d)(ii) below, that it is infeasible to return or destroy PHI, the protections of this BAA with respect to such PHI shall remain in effect until such PHI is returned or destroyed. The obligations of Business Associate under this BAA shall survive the termination of any Underlying Agreement.
     2. Termination for Material Breach. Upon a party’s knowledge of a material breach by the other party, the non-breaching party shall either:
        1. Provide an opportunity for the breaching party to cure the breach or end the violation within a period of time specified by the non-breaching party. If the breaching party does not cure or end the violation in the specified period of time, the non-breaching party may terminate this BAA.; or
        2. Immediately terminate this BAA if the breaching party has breached a material term of this BAA and cure is not possible.
     3. Termination for Violation of HIPAA. GCHP may terminate this BAA, effective immediately, if Business Associate is named as a defendant in a criminal proceeding for a violation of the HIPAA Rules, or other security or privacy laws, or a finding or stipulation that the Business Associate has violated any standard or requirement of the HIPAA Rules or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
     4. Effect of Termination.
        1. Except as otherwise provided in subsection 4(d)(ii) below, within 30 days of termination of this BAA for any reason, Business Associate shall either return or destroy all PHI, as requested by GCHP. If GCHP requests that Business Associate return the PHI, Business Associate shall return such PHI in the form and format requested by GHCP, or in an mutually agreeable form and format, at no charge to GCHP. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate
        2. If the parties determine upon reasonable consultation that returning or destroying any or all PHI is infeasible, the protections of this BAA shall continue to apply to such PHI, and Business Associate shall limit further Uses and Disclosures of PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate, maintains such PHI. GCHP hereby acknowledges and agrees that infeasibility includes Business Associate need to retain PHI for purposes of complying with its work product documentation standards and Business Associate, shall:
           1. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or carry out its legal responsibilities;
           2. Return to GCHP the remaining PHI that Business Associate still maintains in any form;
           3. Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent Use or Disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
           4. Not Use or Disclose PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out in Section 2, above, which applied prior to termination; and
           5. Return to GCHP, if not destroyed, the PHI retained by Business Associate, when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
  3. Miscellaneous.
     1. Regulatory References. A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended, and for which compliance is required.
     2. Amendment. Upon the effective date of any final regulation or amendment to the HIPAA Rules, this BAA shall be deemed automatically amended so that the obligations it imposes on the parties remain in compliance with such regulations. Following amendment of the BAA in this manner, the parties shall, as necessary, work together to clarify their respective obligations with respect to any new requirements under the modified HIPAA Rules.
     3. Notice. Any notice, report or other communication to GCHP by Business Associate required or permitted in this BAA shall be in writing and shall be deemed to have been given on the day of service if served personally or by facsimile transmission with confirmation, or three (3) days after mailing if mailed by registered or certified mail, or two (2) days after delivery by a nationally recognized overnight courier, to the GCHP Compliance Officer at the address noted below or to such other person or address as GCHP may designate in writing from time to time:

Gold Coast Health Plan  
711 E. Daily Drive, Suite #106   
Camarillo, CA 93010-6082

Fax: (805) 437-5132  
compliance@goldchp.org

* + 1. Interpretation. The terms and conditions of this BAA shall be interpreted as broadly as necessary to implement and comply with the HIPAA Rules and applicable state laws. The Parties agree that any ambiguity in the terms and conditions shall be resolved in favor or a meaning that complies with and is consistent with the HIPAA Rules and applicable State law.
    2. Independent Contractors. Business Associate and GCHP are independent contractors and this BAA will not establish any relationship of partnership, joint venture, employment, franchise or agency between Business Associate and GCHP.
    3. Conflicts. In the event that any terms of this BAA are inconsistent with the terms of any Underlying Agreement, then the terms of this BAA shall control. Otherwise, this BAA shall be construed under, and in accordance with, the terms of such Underlying Agreement, and shall be considered a supplement to such Underlying Agreement.
    4. Entire Agreement. This BAA shall constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the parties hereto relating to such subject matter.
    5. Governing Law. This BAA shall be governed and construed in accordance with the laws of the State of California, without regard to its conflict of laws rules.
    6. Waiver of Provisions. Any waiver of any terms and conditions hereof must be in writing and signed by the Parties hereto. A waiver of any of the terms and conditions hereof shall not be construed as a waiver of any other term or condition hereof.
    7. No Third Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than GCHP, Business Associate, and their respective successor or assigns, any rights, remedies, obligations, or liabilities whatsoever.
    8. Equitable Relief. Business Associate understands and acknowledges that any Disclosure or misappropriation of any PHI or PI in violation of this BAA may cause GCHP irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that GCHP shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further Disclosure or Breach and for such other relief as GCHP shall deem appropriate. Such right of GCHP is to be in addition to the remedies otherwise available to GCHP at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond by GCHP.
    9. Insurance. In addition to any general and/or professional liability insurance required of Business Associate, Business Associate agrees to obtain and maintain, at its sole expense, liability insurance on an occurrence basis, covering any and all claims, liabilities, demands, damages, losses, costs and expenses arising from the security and privacy obligations of Business Associate, its officers, employees, agents and Subcontractors under this BAA. Such insurance coverage will be maintained for the term of this BAA, and a copy of such policy or a certificate evidencing the policy shall be provided to GCHP at GCHP’s request.
    10. Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any Subcontractors or members of its Workforce assisting Business Associate in the performance of its obligations under this BAA available to GCHP, at no cost to GCHP, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against GCHP, its directors, officers or employees based upon a claim of violation of the HIPAA Rules or other applicable laws relating to privacy or security that involves Business Associate’s performance under this BAA.
    11. Indemnification. Notwithstanding anything to the contrary which may be contained in any Underlying Agreement, including but not limited to any limitations on liability contained therein, Business Associate hereby agrees to indemnify, defend, and hold harmless GCHP and its respective officers, directors, managers, members, employees and agents from and against any and all losses, damages, fines, penalties, claims or causes of action and associated expenses (including, without limitation, costs of judgments, settlements, court costs and attorney’s fees) arising out of or resulting from the performance of Business Associate (including its employees, directors, officers, agents, or other members of its Workforce, and its Subcontractors) under this BAA, including but not limited to a Breach or State Breach, violation of the terms of this BAA, or failure of Business Associate to perform its obligations under this BAA or to comply with the HIPAA Rules or applicable state privacy or security law.
        1. Right to Tender or Undertake Defense. If GCHP is named a party in any judicial, administrative, or other proceeding arising out of or in connection with a breach of this BAA or a violation the HIPAA Rules or other security or privacy laws by Business Associate or any subcontractor or agent under Business Associate’s control, GCHP will have the option at any time to either (a) tender its defense to Business Associate, in which case Business Associate will provide qualified attorneys, consultants, and other appropriate professionals to represent GCHP’s interests at Business Associate’s expense, or (b) undertake its own defense, choosing the attorneys, consultants, and other appropriate professionals to represent its interests, in which case Business Associate will be responsible for and shall pay reasonable fees and expenses of such attorneys, consultants, and other appropriate professionals.
        2. Right to Control Resolution. GCHP shall have the sole right and discretion to settle, compromise, or otherwise resolve any and all claims, causes of action, liabilities, or damages against it, notwithstanding that GCHP may have tendered its defense to Business Associate. Any such resolution will not relieve Business Associate of its obligation to indemnify GCHP.
    12. Audits and Enforcement. To the extent GCHP determines that an examination of Business Associate’s security practices is necessary to comply with GCHP’s legal obligations regarding PHI or PI, GCHP or its authorized agents or contractors may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this BAA. Upon request of GCHP, Business Associate agrees to certify its compliance with the HIPAA Security Rule. Provide a copy of a third party audit of Business Associate’s HIPAA security compliance and assessment of risks, complete a GCHP security questionnaire, or provide other information that would assist GCHP in assessing Business Associate’s compliance with the HIPAA Rules. GCHP’s failure to inspect or request information does not relieve Business Associate of its responsibility to comply with this BAA, nor does GCHP’s failure to detect non-compliance waive GCHP’s rights under this BAA.
    13. Legal Actions. Promptly, but no later than five (5) business days after notice thereof, Business Associate shall advise GCHP of any actual or potential action, proceeding, regulatory or governmental orders or actions, or any material threat thereof that becomes known to it that may affect the interests of GCHP or jeopardize this BAA, and of any facts and circumstances that may be pertinent to the prosecution or defense of any such actual or potential legal action or proceeding, except to the extent prohibited by law.
    14. Notice of Request or Subpoena for Data. Business Associate agrees to notify GCHP promptly, but no later than five (5) business days after Business Associate’s receipt of any request or subpoena for PHI or PI or an accounting thereof. Business Associate shall promptly comply with GCHP’s instructions for responding to any such request or subpoena, unless such GCHP instructions would prejudice Business Associate. To the extent that GCHP decides to assume responsibility for challenging the validity of such request, Business Associate agrees to reasonably cooperate with GCHP in such challenge.
    15. Requests from Government. Promptly, but no later than five (5) calendar days after notice thereof, Business Associate shall advise GCHP of any inquiry by the Secretary or other State regulatory authorities concerning any actual or alleged violation of the HIPAA Rules or applicable State privacy or security law with respect to PHI or PI under this BAA. Business Associate shall cooperate fully with GCHP in responding to any such inquiry and shall provide GCHP with a copy of any information that Business Associate submits to such authorities concurrently with such submission.

IN WITNESS WHEREOF, the parties have caused this BAA to be executed as of the effective date of the Underlying Agreement.

Ventura County Medi-Cal Managed Care [Business Associate]

Commission d.b.a. Gold Coast Health Plan

By: By:

Title: Chief Executive Officer Title:

Date: Date: