

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) applies to services provided to, for or on behalf of CenturyLink where Supplier acts in the capacity of a Business Associate in the course of providing or performing the services. CenturyLink shall mean CenturyTel Service Group, LLC and any of its affiliates. Supplier acts as a Business Associate when providing Services described in 45 CFR §160.103 including, without limitation, Services where Supplier has access to, creates, receives, maintains and/or transmits PHI (“Services”). When Supplier acts in the capacity of a Business Associate, Supplier shall be referred to as Business Associate.

As a condition precedent to providing the Services and in the course thereof, Business Associate agrees to fully comply with HIPAA (including as it relates to security and breach notification) and the terms of this BAA.

Article I – Definitions

- 1.1 “ARRA” shall have the meaning set forth in the American Recovery and Reinvestment Act of 2009.
- 1.2 “Breach” shall have the meaning set forth in 45 CFR § 164.402.
- 1.3 “Breach Notification Rule” shall have the meaning set forth in the “Standards for Breach Notification for Unsecured Protected Health Information,” 45 CFR Part 164, Subpart D, as may be revised from time to time by the Secretary.
- 1.4 “Business Associate” shall have the meaning set forth in 45 CFR § 160.103.
- 1.5 “Covered Entity” shall have the meaning set forth in 45 C.F.R. § 160.103.
- 1.6 “Disclose” or “Disclosure” shall have the meaning set forth in 45 C.F.R. § 160.103.
- 1.7 “HIPAA” shall have the meaning set forth in the “Health Insurance Portability and Accountability Act of 1996, as amended and the associated regulations and the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) and the associated regulations (“ARRA” also known as the “HITECH Act”).”
- 1.8 “HITECH Act” shall have the meaning set forth in the Health Information Technology for Economic and Clinical Health Act, as incorporated in the ARRA.
- 1.9 “Individual” shall have the meaning set forth in the Privacy Rule, including, but not limited to, 45 C.F.R. § 160.103, and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g). “Individually Identifiable Health Information” shall have the same meaning as the term is given in 45 C.F.R. § 160.103.
- 1.10 “Notice of Privacy Practices” shall mean the Covered Entity’s legally required notice of privacy practices for Protected Health Information required by 45 C.F.R. § 164.520.
- 1.11 “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information set forth in 45 C.F.R. Parts 160 and 164 (Subparts A and E).
- 1.12 “Protected Health Information” or “PHI” shall have the meaning set forth in 45 C.F.R. § 160.103.
- 1.13 “Secretary” shall mean the Secretary of the United States Department of Health and Human Services.
- 1.14 “Security Incident” shall have the meaning set forth in 45 C.F.R. § 164.304.
- 1.15 “Security Rule” shall mean the Security Standards set forth in 45 C.F.R. Part 160.164.
- 1.16 “Unsecured Protected Health Information” shall have the meaning set forth in § 13402(h)1 of the ARRA.
- 1.17 “Use” shall have the meaning set forth in 45 C.F.R. § 160.103.

Any capitalized term not expressly defined herein shall have the meaning set forth in HIPAA, ARRA, HITECH, Security Rule, and Privacy Rule.

Article II – Obligations and Activities of Supplier When Acting As a Business Associate

- 2.1 Status of Supplier. Supplier acknowledges and agrees that it is a Business Associate of, for or on behalf of CenturyLink where Supplier acts in the capacity of a Business Associate in the course of providing or performing the Services.
- 2.2 Business Associate agrees not to Use or Disclose PHI in violation of this BAA or applicable law. Business Associate further agrees that it will access only the minimum amount of PHI necessary to perform the Services.
- 2.3 Business Associate agrees, at its expense, to (i) use reasonable safeguards to prevent Use or Disclosure of the PHI, including Electronic PHI, in contravention of this BAA; (ii) comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI; (iii) implement administrative, physical, and technical safeguards and security measures that reasonably and appropriately prevent Use or Disclosure of PHI other than as provided for by this BAA, and (iv) use all reasonable safeguards to prevent any casual or incidental viewing of PHI by Business Associate in the normal course of providing Services, including without limitation, the use of encryption while data is in transit and/or residing on servers or storage systems.

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- 2.4** Business Associate shall encrypt any and all Protected Health Information in a manner consistent with guidelines established by the Secretary, except where the provision of the Services requires Protected Health Information to be unencrypted in which case the PHI will remain unencrypted only as long as necessary to provide the Services.
- 2.5** Business Associate agrees to report to CenturyLink any Use or Disclosure of PHI not provided for by this BAA of which it becomes aware. Business Associate will make a written report to CenturyLink as soon as possible but not later than five calendar (5) days after Business Associate learns of such unauthorized Use or Disclosure, unless a shorter time is reasonably requested by CenturyLink or the Covered Entity. Business Associate's written report will provide sufficient information to inform CenturyLink of the nature of the unauthorized Use or Disclosure, the PHI used or disclosed, and what corrective action Business Associate has or will take to prevent future similar unauthorized Use or Disclosure.
- 2.6** Business Associate shall comply with the Breach Notification Rule, including reporting, following discovery and without unreasonable delay, but in no event later than five calendar (5) days or a shorter time if reasonably requested by CenturyLink or the Covered Entity. Business Associate shall cooperate with CenturyLink in investigating the Breach, performing the appropriate risk assessment, and in all other respects meeting CenturyLink's or Covered Entity's obligations under the HITECH Act and any other security breach notification laws at Business Associate's expense. Any such report shall include the identification (if known or reasonably able to be determined) 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 such Breach.
- 2.7** Business Associate agrees to ensure that any of its agents, including a subcontractor, that may have access to PHI received from, created or received by Business Associate, or maintained for or on behalf of CenturyLink or Covered Entity, agrees in writing to substantially the same restrictions, conditions and obligations to implement reasonable and appropriate safeguards to protect PHI or Electronic PHI.
- 2.8** Business Associate agrees to make internal practices, books, personnel and records, including policies and procedures and PHI, relating to the Use and Disclosure of PHI received from, or created or received by Business Associate for or on behalf of CenturyLink or Covered Entity, available to CenturyLink, the CenturyLink customer, Covered Entity or Secretary, in a time and manner as reasonably requested by or designated by the Secretary, for purposes of the Secretary determining CenturyLink's or Covered Entity's compliance with the HIPPA rules, including without limitation, the Privacy Rule and/or Security Rule.
- 2.9** Business Associate agrees to document and to provide to CenturyLink, in a time and manner reasonably requested by CenturyLink, such Disclosures of PHI and information related to such Disclosures as would be required for CenturyLink or Covered Entity to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.
- 2.10** Business Associate agrees to provide access to PHI to CenturyLink or Covered Entity at the request of CenturyLink as may be required to meet the requirements under 45 CFR § 164.524 and the HITECH Act. Under no circumstances shall Business Associate accept or respond to requests for access to PHI made by Individuals; Business Associate shall notify CenturyLink within five calendar (5) days of any request for PHI by an Individual.
- 2.11** Restriction Requests on Uses and Disclosures. Business Associate shall not agree to a restriction on the Use or Disclosure of Protected Information pursuant to 45 CFR § 164.522(a) or Section 13405(a) of the HITECH Act without first consulting CenturyLink. Business Associate is not obligated to implement any restriction, if such restriction would hinder Health Care Operations or the Services Business Associate provides to CenturyLink or Covered Entity, unless such restriction would otherwise be required by Section 13405(a) of the HITECH Act.
- 2.12** Permitted Uses and Disclosures of PHI.
- (a) Permitted Uses. Business Associate may Use or Disclose Protected Health Information to perform such functions and activities as are necessary to perform the Services for, or on behalf of, CenturyLink or Covered Entity provided that such Use or Disclosure would not violate the Privacy Rule and HITECH.
 - (b) Except as otherwise limited in this BAA, Business Associate may disclose Protected Health Information for Business Associate's proper management, administration and legal responsibilities provided that Disclosures are required or permitted by law, including but not limited to, to perform the Services for or on behalf of CenturyLink.
 - (c) Except as otherwise limited in this BAA, Business Associate may use Protected Health Information to provide Data Aggregation services to CenturyLink or Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

Article III – Obligations of CenturyLink

- 3.1** CenturyLink or Covered Entity shall notify Business Associate as soon as possible in writing of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI, to the extent that such changes may affect the Services.
- 3.2** CenturyLink or Covered Entity shall notify Business Associate as soon as possible in writing of any restriction to the Use or Disclosure of Protected Health Information that CenturyLink or Covered Entity has agreed to in accordance with 45 C.F.R. §

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164.522 ("Use or Disclosure Restrictions"), to the extent that such restriction may affect Business Associate's Use or Disclosure of Protected Health Information.

- 3.3 Permissible Requests by CenturyLink or Covered Entity. CenturyLink or Covered Entity shall not request, and Business Associate shall not be obligated to Use or Disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule or Security Rule if done by CenturyLink or Covered Entity, unless otherwise noted in this BAA.

Article IV – Amendment and Termination

- 4.1 Amendment. Business Associate agrees to take such action as is necessary to amend this BAA from time to time as CenturyLink reasonably determines necessary to comply with HIPAA, or any other applicable law, rule or regulation.
- 4.2 Term. The Term of this BAA shall be effective upon the provision of Service to CenturyLink or Covered Entity that involves Business Associate acting in the capacity of a Business Associate as such term is defined in the Rules and shall terminate when: (i) the Agreement terminates including, without limitation, any transition services period; and (ii) all of the Protected Health Information provided by CenturyLink or Covered Entity to Business Associate, or created, received, maintained or transmitted by Business Associate for or on behalf of CenturyLink or Covered Entity, is destroyed or returned to CenturyLink or Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- 4.3 Termination for Cause. Upon CenturyLink's knowledge of a material breach by Business Associate, CenturyLink shall either:
- Provide an opportunity for Business Associate to cure the breach or end the breach and terminate this BAA and the Services if Business Associate does not cure the breach or end the violation within the time specified by CenturyLink;
 - Immediately terminate this BAA and the Services if Business Associate has breached a material term of this BAA and cure is not possible; or;
 - If neither termination nor cure is feasible, CenturyLink shall report the violation to the Covered Entity or at the request of the Covered Entity, to the Secretary but provide advance written notice of such intention to the Business Associate.
- 4.4 Effect of Termination.
- Except as provided in paragraph (b) below of this Subsection, upon termination of this BAA for any reason, upon mutual agreement of the parties, Business Associate shall return or destroy all Protected Health Information received from CenturyLink or Covered Entity, or created or received by Business Associate for or on behalf of CenturyLink or Covered Entity. This provision shall also 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.
 - In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to CenturyLink written notification of the conditions that make return or destruction infeasible. Business Associate shall extend the protections of this BAA 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.
- 4.5 Cure of Non-material Breach. CenturyLink shall provide an opportunity for Business Associate to cure a non-material breach within a time mutually agreeable to the parties.
- 4.6 Covered Entity's termination of its agreement with CenturyLink for whatever reason shall constitute cause for CenturyLink to terminate this BAA and the Services.
- 4.7 Survival. Provisions that contemplate a right or obligation that would be due or performed after expiration or termination of this BAA, shall survive the expiration or termination.

Article V – General

- 5.1 Other Agreements. CenturyLink and Business Associate acknowledge and affirm that this BAA is in no way intended to address or cover all aspects of the relationship of CenturyLink and Business Associate. Rather, this BAA deals only with those matters that are specifically addressed herein. Further, except as may be agreed upon by the parties for a specific Covered Entity, this BAA supersedes any prior business associate agreements entered into by Business Associate and CenturyLink (or any predecessor to CenturyLink), and shall apply to all PHI existing as of the effective date of this BAA or created or received thereafter while this BAA is in effect.
- 5.2 Notices. Notices provided under the BAA must be in writing and delivered by (a) certified mail, return receipt requested, (b) hand delivered, (c) facsimile with receipt of a "Transmission OK" acknowledgment, (d) e-mail, or (e) delivery by a reputable overnight carrier service [in the case of delivery by facsimile or e-mail the notice must be followed by a copy of the notice being delivered by a means provided in (a), (b) or (e)]. The Notice will be deemed given on the day the notice is received. In the case

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of notice by facsimile or e-mail, the notice is deemed received at the local time of the receiving machine, and if receipt of such facsimile cannot be confirmed, then the date the follow-up copy is received. Notices must be delivered to the following addresses or at such other addresses as may be later designated by notice:

If to CenturyLink:	If to Business Associate
Attn: Chief Privacy Officer CenturyLink 931 14 th Street Denver, CO 80202 Privacy@centurylink.com	Attn: _____ _____ _____ _____ Fax: _____ Email: _____
With a copy to: CenturyLink Law Department 931 14 th Street Denver, CO 80202 Fax: (720) 578-2913	With a copy to: Attn: _____ _____ _____ _____ Fax: _____ Email: _____

- 5.3** Regulatory References. A reference in this BAA to a section in the Privacy Rule or the Security Rule means the section in the respective regulations, as amended and in effect at the relevant time. All references to "C.F.R." are to the Code of Federal Regulations as amended and in effect at the relevant time.
- 5.4** Indemnification. Business Associate shall indemnify, defend and hold CenturyLink, its affiliates, contractors and customer harmless from any and all liability or claims arising out of or related to Business Associate's actions or inactions under this BAA. This obligation is not limited by any limitation of liability set forth in an agreement with CenturyLink.
- 5.5** Severability. If any provision or part of this BAA is found to be invalid, the remaining provisions of this BAA shall remain in full force and effect.
- 5.6** Construction. The use of the singular form of a word herein shall be deemed to include the plural form, and vice versa, as appropriate. All references to "Sections" contained herein refer to Sections of this BAA, unless otherwise stated.
- 5.7** Interpretation. The provisions of this BAA shall be interpreted in a manner intended to achieve compliance with HIPAA. Whenever this BAA uses the term "including" followed by a specific item or items, or there is a passage having a similar effect, such passages of this BAA shall be construed as if the phrase "without limitation" followed such term (or otherwise applied to such passage in a manner that avoids limitations on its breadth of application). Where the term "and/or" is used in this BAA, the provision that includes the term shall have the meaning the provision would have if "and" replaced "and/or," but it shall also have the meaning the provision would have if "or" replaced "and/or." It is hereby expressly understood and agreed that this BAA was negotiated by both parties each of whom was represented by counsel of its choosing. Accordingly, the parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this BAA.
- 5.8** No Third-Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, and nothing herein shall confer, upon any person other than the parties hereto any rights, remedies, obligations or liabilities whatsoever.
- 5.9** Successors and Assigns. This BAA shall inure to the benefit of, and be binding upon, the successors and assigns of CenturyLink and Business Associate. However, this BAA is not assignable by any party without the prior written consent of the other parties, which shall not be unreasonably withheld, except that CenturyLink may assign or transfer this BAA to any entity owned or under common control of CenturyLink.
- 5.10** Applicable Law. The provisions of this BAA shall be construed and administered to, and its validity and enforceability determined under HIPAA. To the extent that HIPAA is not applicable in a particular circumstance, the laws of the State of Delaware, irrespective of its choice of law principles, shall govern.