

BUSINESS ASSOCIATE AGREEMENT
AGENT/AGENCY and GENERAL AGENT

This Business Associate Agreement (“Agreement”) is entered into by and between you (the Agent) and/or the Agency that you represent (Agent and Agency collectively, the “Business Associate”), on the one hand, and, Black, Gould & Associates, Inc. (“General Agent”) on the other (Business Associate and General Agent each a “Party”, and collectively, the “Parties”).

RECITALS

WHEREAS, Business Associate is the Agent/broker for its employer clients (“Employer”), which sponsor and maintain an employee welfare benefit plan (“Covered Entity”), and Warner Pacific Insurance Services, Inc. acts as a general agent with respect to the contracts entered into by and between the Employer/Covered Entity and various insurance carriers;

WHEREAS, Business Associate’s services are required and have been retained by Covered Entity in connection with the administration of the benefits offered by Covered Entity (a true and correct copy of the agreement between such Employer/Covered Entity and Business Associate is retained by the Business Associate);

WHEREAS, in the course of providing services to Covered Entity, Business Associate may perform functions or activities involving the Use or Disclosure of PHI pertaining to participants and beneficiaries of Covered Entity, and, in turn, General Agent may perform functions or activities involving the Use or Disclosure of such PHI in the course of providing services to Business Associate;

WHEREAS, the Secretary of Health and Human Services has issued regulations requiring a contract between Covered Entity and Business Associate in order to protect against the unauthorized Use and Disclosure of Protected Health Information by Business Associate, and, in turn, requiring a contract between Business Associate and General Agent to the extent that General Agent creates, receives, maintains, or transmits PHI from Business Associate;

WHEREAS, this Agreement is intended to ensure that General Agent will establish and implement appropriate safeguards for PHI that General Agent may receive, create, maintain, Use, or Disclose in connection with the functions, activities, and services that are performed;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. DEFINITIONS

- a. Unless the context clearly indicates otherwise, the following terms in this Agreement shall have the same meaning as those terms are defined in 45 C.F.R. Part 160 or 164: Breach, Data Aggregation, Designated Record Set, Disclosure, Individual, Required By Law, Secretary, and Use.
- b. Specific definitions:

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1. "Covered Entity" shall have the meaning set forth in 45 C.F.R. § 160.103 and, for purposes of this Agreement, shall refer to: (i) the Employer/Covered Entity to which the Business Associate has sold insurance products and for which the Business Associate has used General Agent for services; or (ii) insurance carriers. General Agent is not a Covered Entity.
 2. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, as amended from time to time.
 3. "Privacy Rule" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and 164, subparts A and E.
 4. "Protected Health Information" or "PHI" shall have the same meaning as the term "Protected Health Information" as defined in 45 C.F.R. § 160.103, limited to the information created or received by General Agent from or on behalf of Covered Entity.
 5. "Security Rule" shall mean the Security Standards and Implementation Specifications in 45 C.F.R. Part 160 and Part 164, Subpart C.
 6. "Unsecured PHI" shall have the same meaning as the term "unsecured protected health information" in 45 C.F.R. § 164.402.
- c. This Agreement also reflects federal breach notification requirements imposed on Business Associate when Unsecured PHI is acquired by an unauthorized party, and the expanded privacy and security provisions imposed on business associates.

II. OBLIGATIONS AND ACTIVITIES OF GENERAL AGENT

General Agent agrees to:

- a. Not Use or Disclose protected health information other than as permitted or required by the Agreement or as Required By Law;
- b. Use reasonable and appropriate safeguards to prevent Use or Disclosure of electronic Protected Health Information other than as provided for by the Agreement or as Required By Law;
- c. Implement administrative, physical, and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the Security Rule;
- d. In accordance with 45 CFR § 164.502(e)(1)(ii) and § 164.308(b)(2), if applicable, ensure that Business Associates that create, receive, maintain, or transmit electronic Protected Health

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Information from General Agent agree to the same restrictions, conditions, and requirements that apply to General Agent with respect to such information;

- e. Access to Protected Health Information. Within ten (10) business days of a request by Business Associate or Covered Entity for access to Protected Health Information in any Designated Record Set of Covered Entity maintained by General Agent, General Agent shall make available to Business Associate or Covered Entity such Protected Health Information as required by 45 C.F.R. § 164.524, but only to the extent General Agent maintains the Designated Record Set. If General Agent receives a request for access to Covered Entity's Protected Health Information directly from an Individual, General Agent shall forward such request to Business Associate without undue delay and Business Associate shall be responsible for communicating such request to Covered Entity;
- f. Amendment of Protected Health Information. Within ten (10) business days of a request by Business Associate or Covered Entity to amend an Individual's Protected Health Information contained in any Designated Record Set of Covered Entity maintained by General Agent, General Agent shall provide such Protected Health Information to Business Associate or Covered Entity, as applicable, for amendment and incorporate any such amendments into the Protected Health Information as required by 45 C.F.R. § 164.526, but only to the extent General Agent maintains the Designated Record Set. If General Agent receives a request to amend Protected Health Information directly from an Individual, General Agent shall forward such request to Business Associate without undue delay and Business Associate shall be responsible for communicating such request to Covered Entity;
- g. Maintain and make available the information required to provide an accounting of Disclosures to Business Associate as necessary to satisfy Business Associate's or Covered Entity's obligations under 45 CFR § 164.528;
- h. Comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s), but only to the extent General Agent is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164;
- i. Make its internal practices, books, and records relating to the Use and Disclosure of Protected Health Information received from, or created or received by General Agent from the Business Associate or Covered Entity available to the Secretary for purposes of determining compliance with the Privacy Rule, unless otherwise protected from discovery or Disclosure by law or unless otherwise prohibited from discovery or Disclosure by law;
- j. Be familiar with and comply with any applicable state privacy laws which are more stringent than the Privacy Rule, including but not limited to the Insurance Information and Privacy Protection Act, Cal. Ins. Code §§ 791-791.27 and the accompanying regulations promulgated by the California Department of Insurance, Cal. Admin. Code, title 10, §§ 2698.1689.24, the Confidentiality of Medical Information Act, Cal. Civ. Code §§ 56-56.37;

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- k. Mitigate, to the extent practicable, any harmful effect that is known to General Agent as a result of a Use or Disclosure of PHI in violation of this Agreement's requirements or that would otherwise cause a Breach of Unsecured PHI; and
- l. Report to Business Associate any (i) Use or Disclosure of the Protected Health Information not permitted by this Agreement or by law, or (ii) Breach of Unsecured PHI, without unreasonable delay and in no case later than sixty (60) calendar days after discovery of such unauthorized Use, Disclosure or Breach. In the event of a Breach of Unsecured PHI, such notice shall include, to the extent such information is reasonably available to General Agent, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by General Agent to have been, accessed, acquired, or disclosed in connection with such Breach and any other available information that Covered Entity is required to include in its notification to the Individual under 45 C.F.R. § 164.404(c).

III. PERMITTED USES AND DISCLOSURES BY GENERAL AGENT

- a. General Agent may only Use or Disclose Protected Health Information as necessary to perform the services set forth in its service agreement with Business Associate, or to the extent required to perform the services for which it has been retained by Business Associate. These services may include:
 - 1. Coordination with Business Associate, carriers and other business associates, as directed;
 - 2. Provide quoting services, proposal generation, applications, enrollment support, supplies, and materials for the carriers and plans selected by the Agent and the Covered Entity;
 - 3. Customer service support to Business Associate and his/her employer clients/Covered Entities.
- b. General Agent may de-identify the Protected Health Information consistent with 45 CFR 164.514(a)-(c).
- c. General Agent may Use or Disclose Protected Health Information as Required By Law.
- d. General Agent may Use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).
- e. General Agent may Use Protected Health Information to report violations of law to federal and state authorities consistent with 45 C.F.R. 164.502(j)(1).
- f. General Agent may Disclose Protected Health Information for the proper management and administration of General Agent or to carry out the legal responsibilities of General Agent,

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provided the Disclosures are Required By Law, or General Agent obtains reasonable assurances from the person to whom the information is Disclosed that the information will remain confidential and Used or further Disclosed only as Required By Law or for the purposes for which it was Disclosed to the person, and the person notifies General Agent of any instances of which it is aware in which the confidentiality of the information has been breached.

IV. OBLIGATIONS OF BUSINESS ASSOCIATE

- a. Business Associate shall notify General Agent of any limitation(s) in Covered Entity's notice of privacy practices under 45 CFR 164.520, to the extent that such limitation may affect General Agent's Use or Disclosure of PHI.
- b. Business Associate shall notify General Agent of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI, to the extent that such changes may affect General Agent's Use or Disclosure of PHI.
- c. Business Associate shall notify General Agent of any restriction on the Use or Disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect General Agent's Use or Disclosure of PHI.
- d. Business Associate must execute a separate Business Associate Agreement with its employer clients/Covered Entities referenced in this Agreement.

V. PERMISSIBLE REQUESTS BY BUSINESS ASSOCIATE

Business Associate, acting on its own or on behalf of its employer client/Covered Entity, shall not request General Agent to Use or Disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except as otherwise permitted by this Agreement.

VI. TERM AND TERMINATION

- a. Term. The Term of this Agreement shall be effective as of the effective date of this Agreement, and shall terminate on the date General Agent is no longer retained to perform services for Business Associate, or the date Business Associate terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- b. Termination for Cause. The Parties authorize immediate termination of this Agreement if either Party determines the other Party has violated a material term of the Agreement, and that Party has not cured the breach or ended the violation within sixty (60) days of receiving written notice of the breach, or any other time specified in writing by Covered Entity. Termination is also permissible on any ground, and on the terms, set forth in the services agreement between the Parties.

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- c. Obligations of General Agent Upon Termination. Upon termination of this Agreement for any reason, General Agent, with respect to Protected Health Information received from Business Associate, or created, maintained, or received by General Agent on behalf of Business Associate, shall:
1. Retain only that Protected Health Information which is necessary for General Agent to continue its proper management and administration or to carry out its legal responsibilities;
 2. Return to Business Associate the remaining Protected Health Information that General Agent still maintains in any form;
 3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent Use or Disclosure of the Protected Health Information, other than as provided for in this Section, for as long as General Agent retains the Protected Health Information;
 4. Not Use or Disclose the Protected Health Information retained by General Agent other than for the purposes for which such Protected Health Information was retained; and
 5. Return to Business Associate the Protected Health Information retained by General Agent when it is no longer needed by General Agent for its proper management and administration or to carry out its legal responsibilities.
- d. Survival. The obligations of General Agent under this Section shall survive the termination of this Agreement for so long as General Agent retains any of the Protected Health Information made available to General Agent under this Agreement.

VII. MISCELLANEOUS

- a. Regulatory References. A reference in this Agreement to a section of applicable law means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of HIPAA and any other applicable law, including state laws, as applicable. No amendment of this Agreement shall be effective unless made in writing by the Parties.
- c. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the Privacy Rule.
- d. Counterparts. This Agreement may be executed in counterparts which, taken together, shall constitute the whole of this Agreement between the parties.

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- e. Assignment. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors, heirs, and assigns.
- f. Conferring Rights or Remedies. Except as may be expressly set forth herein, the Parties do not intend to confer any rights or remedies upon any person other than the Parties to this Agreement.
- g. Counsel. Each party to this Agreement has had the opportunity to consult with counsel of its choice as to the form and content of this Agreement and the advisability of executing it. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party will not be employed in any interpretation of this Agreement.
- h. Attorneys' Fees and Costs. Except as otherwise specifically provided by law, all legal and other costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including without limitation legal and accounting fees, shall be paid by the Party incurring such expenses. In the event of any litigation or arbitration between the Parties respecting or arising out of this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees and costs.
- i. Authorized Signature. If you enter into this Agreement on behalf of your Agency, you represent that you are authorized to do so.
- j. Arbitration. The Parties recognize and confirm that this is an Agreement between honorable business organizations. This Agreement is to be construed consistent with its spirit as well as the letter of the Agreement. It is anticipated that any disagreements that may arise will be resolved between the Parties by good faith negotiations. Should that not be possible, all disputes between the Parties arising out of or relating to provisions of this Agreement, or concerning its interpretation or validity, whether before or after termination of this Agreement, shall be submitted to final and binding arbitration in accordance with, and under, the rules of practice and procedure for arbitration hearings of the Judicial Arbitration and Mediation Services, Inc. Arbitration shall be the parties' exclusive remedy.
- k. Choice of Law and Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of California in addition to any governing federal law. Any arbitration or other legal action between the Parties respecting or arising out of this Agreement shall be held or filed in either the state or federal courts in the State of California, County of Los Angeles.
- l. Notices. Any notice, demand, or request given in accordance with this Agreement shall be given by personal delivery; by messenger delivery; by email, by facsimile transmission; by placing said notice in the United States mail, registered or first-class, postage prepaid; or by sending such notice via an overnight courier service. Notice shall be deemed given when delivered to a Party, when the facsimile transmission occurs, or on the date when said notice is deposited in the United States mail, postage prepaid.

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- m. Notice shall be given to General Agent as follows: Black, Gould & Associates, Inc., 3800 N. Central, 9th Floor; Attention: Compliance and HIPAA Privacy Officer.
- n. Notice shall be given to Business Associate with the information provided and on file as follows: Agent Name and Agent Address or Fax; or, if Agent is employed by Agency, Agency Name and Agency Address or Fax.
- o. Controlling Agreement. In the event any provision of this Agreement conflicts with the services agreement between the Parties, this Agreement controls.
- p. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement, each of which shall continue to be valid and binding upon the Parties.
- q. Waiver. A waiver by any Party of any of the terms and conditions of this Agreement in any one instance shall not be deemed or construed to be a waiver of such term or condition for the future, or of any subsequent breach thereof, nor shall it be deemed a waiver of performance of any other obligation hereunder. No waiver shall be effective unless it is made in writing by the waiving Party.

BUSINESS ASSOCIATE

AGENT NAME_AND_AGENCY NAME

Signed: _____

Date: _____

Name: _____

Title: _____

GENERAL AGENT

Black, Gould & Associates, Inc.

Signed: Eva Boucher

Date: _____

Name: Eva Boucher

Title: Compliance and HIPAA Privacy Officer