

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “**Agreement**”) effective as of _____, 20__ (“**Effective Date**”), is entered into by and between National Guardian Life Insurance Company (“**Covered Entity**”) and _____ (“**Business Associate**”) (collectively, “the **Parties**”).

RECITALS

WHEREAS, the purpose of this Agreement is to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, as heretofore or hereafter amended (“**HIPAA**”), and associated regulations 45 C.F.R. Parts 160 - 164, as heretofore or hereafter amended (the “**Privacy and Security Rules**”);

WHEREAS, the Parties have heretofore entered into, or may hereafter enter into, one or more agreements or arrangements whereby Business Associate shall or may provide certain services to Covered Entity, and pursuant to such agreements or arrangement(s), Business Associate may be considered a "business associate" of Covered Entity as defined in the Privacy and Security Rules; and

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under such agreements or arrangement(s);

NOW, THEREFORE, in consideration of the Parties continuing obligations under this Agreement, compliance with HIPAA and the Privacy Security Rules, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the requirements of the Privacy and Security Rules and to protect the interests of both Parties.

SECTION 1. INTERPRETATION; DEFINITIONS

1.1 Interpretation. In the event of an inconsistency between the provisions of this Agreement and the provisions of the Privacy and Security Rules, the Privacy and Security Rules shall control. Where provisions of this Agreement are different than those mandated by the Privacy and Security Rules, but are nonetheless permitted by the Privacy and Security Rules, the provisions of this Agreement shall control. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules.

1.2 Definitions. Any and all capitalized terms in this Agreement shall have the definitions ascribed to them herein. Whenever the context so requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter, and the singular shall include the plural, and conversely.

1.2.1 Electronic Protected Health Information (EPHI) means individually identifiable health information that is transmitted by electronic media, maintained in electronic media; or transmitted or maintained in any other form or medium.

1.2.2 Electronic Storage Media is defined as memory devices in computers (hard drives) and any removable/transportable digital memory medium such as magnetic tape or disk, optical disk, or digital memory card.

1.2.3 Individual shall have the same meaning as the term "Individual" in 45 CFR §160.103, as amended, and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

1.2.4 Protected Health Information shall have the same meaning as the term "Protected Health Information" in 45 CFR §160.103, as amended, limited to the information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity.

1.2.5 Required By Law shall have the same meaning as the term "Required By Law" in 45 CFR §164.103, as amended.

1.2.6 Secretary shall mean the Secretary of the United States Department of Health and Human Services or his/her designee.

1.2.7 Transmission Media shall mean media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media.

SECTION 2. SERVICES

Pursuant to its current or future agreement(s) or arrangement(s) with Covered Entity, Business Associate shall or may provide services which may involve the use and/or disclosure of Protected Health Information. Except as otherwise specified herein, Business Associate may make any and all uses of Protected Health Information necessary to perform its obligations under its arrangement(s) and agreement(s) with Covered Entity.

SECTION 3. RESPONSIBILITIES OF BUSINESS ASSOCIATE

3.1 Responsibilities of Business Associate. With regard to its use and/or disclosure of Protected Health Information, the Business Associate hereby agrees to the following:

3.1.1 Not to use or disclose Protected Health Information except as permitted or required by this Agreement or as Required By Law;

3.1.2 To use appropriate safeguards to maintain the security of the Protected Health Information and to prevent unauthorized use and/or disclosure of the Protected Health Information;

3.1.3 To report to the designated privacy officer of Covered Entity, in writing, any use and/or disclosure of the Protected Health Information that is not permitted, required by

this Agreement, or Required By Law, of which Business Associate becomes aware, including breaches of unsecured Protected Health Information as required at 45 CFR 164.410, and any security incident of which it becomes aware, within ten (10) days of Business Associate's discovery of such unauthorized use and/or disclosure;

3.1.4 To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of the Protected Health Information by Business Associate in violation of this Agreement;

3.1.5 To require all of its employees, representatives, subcontractors, and agents that create, receive, maintain, transmit or otherwise have access to the Protected Health Information under this Agreement to agree in writing to adhere to the same restrictions and conditions on the use and/or disclosure of the Protected Health Information that apply herein;

3.1.6 Upon written request, to make available during normal business hours at Business Associate's offices, within ten (10) calendar days of such request, all books, records, and agreements, including policies and procedures, relating to the use and disclosure of the Protected Health Information to Covered Entity for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of this Agreement;

3.1.7 Upon written request, to make available all books, records, and agreements, including policies and procedures, relating to the use and disclosure of the Protected Health Information to the Secretary in a time and manner designated by the Secretary for the purposes of determining compliance with HIPAA and the Privacy and Security Rules;

3.1.8 To document any disclosures of the Protected Health Information 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 the Protected Health Information in accordance with 45 CFR §164.528; and

3.1.9 To provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with this Agreement to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of the Protected Health Information in accordance with 45 CFR §164.528.

3.2 **Responsibilities of Business Associate.** With regard to its use and/or disclosure of Electronic Protected Health Information (EPHI), the Business Associate hereby agrees to the following:

3.2.1 Implement each "Required" administrative, physical, and technical safeguard that reasonably and appropriately protects the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the security regulations 45 CFR 164.302 through 45 CFR 164.318 or as later amended;

3.2.2 Ensure that any agent, including a subcontractor, to whom Business Associate provides EPHI, agrees to implement reasonable and appropriate safeguards to protect such EPHI;

3.2.3 Report to Covered Entity in writing any EPHI that the Business Associate creates, receives, maintains or transmits on behalf of Covered Entity that is not permitted or required by the Agreement within 15 days of the Business Associate's discovery;

3.2.4 For each standard that is "Addressable," Business Associate must either implement the specification, or document why implementing the specification is not reasonable and implement an equivalent alternative measure.

SECTION 4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

4.1 Permitted Uses and Disclosures by Business Associate. With regard to the use and disclosure of Protected Health Information, Business Associate agrees to the following:

4.1.1 Business Associate may only use or disclose Protected Health Information as necessary to perform the services set forth in agreement with Covered Entity;

4.1.2 Business Associate may use or disclose Protected Health Information as required by law;

4.1.3 Business Associate agrees to make uses and disclosures and requests for Protected Health Information consistent with Covered Entity's minimum necessary policies and procedures;

4.1.4 Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity; and

4.1.5 Business Associate may use or disclose Protected Health Information in order to provide data aggregation services relating to health care operations of Covered Entity.

SECTION 5. OBLIGATIONS OF COVERED ENTITY

5.1 Obligations of Covered Entity. With regard to the use and/or disclosure of the Protected Health Information by Business Associate, Covered Entity hereby agrees to the following:

5.1.1 To notify Business Associate of any changes in the form of notice of privacy practices that Covered Entity provides to Individuals pursuant to 45 C.F.R. §164.520 and to provide Business Associate with a copy of the notice currently in use;

5.1.2 To notify Business Associate of any changes, restrictions, or revocation of, permission by Individuals to use or disclose the Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of the Protected Health Information;

5.1.3 To notify Business Associate of any restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to or is required to abide by under 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information;

5.1.4 Not to request Business Associate to use or disclose the Protected Health Information in any manner that would not be permissible under the Privacy and Security Rules if done by Covered Entity; and

5.1.5 Upon receiving notification from Business Associate concerning a breach of unsecured Protected Health Information, Covered Entity shall proceed with providing all required regulatory and consumer notifications.

SECTION 6. TERM AND TERMINATION

6.1 **Term.** The term of this Agreement shall commence as of the Effective Date and shall continue until all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is unfeasible for Business Associate to return or destroy the Protected Health Information, protections are extended to such information by Business Associate, in accordance with the termination provisions of this Agreement.

6.2 **Termination by Covered Entity.** Upon a material breach by Business Associate of any of its obligations hereunder, it shall immediately provide notice thereof to Covered Entity, and Covered Entity shall:

6.2.1 Provide an opportunity for Business Associate to cure the breach or end the violation within a time period which Covered Entity determines is reasonable under the circumstances, terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or

6.2.2 Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and a cure by Business Associate of such breach is not possible; or

6.2.3 If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

6.3 **Termination by Business Associate.** If Business Associate determines that a material condition of performance has changed under this Agreement, or that Covered Entity has violated the terms of this Agreement, Business Associate may provide thirty (30) days prior written notice to Covered Entity of its intention to terminate this Agreement. Business Associate agrees to cooperate with Covered Entity to reach a mutually satisfactory solution to the matter prior to terminating this Agreement and this Agreement shall terminate only if such a solution is not reached.

6.4 Effect of Termination.

6.4.1 Except as provided in Section 6.4.2, upon termination of this Agreement for any reason, Business Associate shall promptly return or destroy all the Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to the Protected Health Information that is in the possession or under the control of subcontractors or agents of Business Associate. Neither Business Associate, nor its subcontractors or agents, shall retain copies of the Protected Health Information; or

6.4.2 In the event that the return or destruction of the Protected Health Information is unfeasible, Business Associate shall promptly provide to Covered Entity notification of the conditions that, in its view, make return or destruction unfeasible. Subject to Covered Entity's agreement therewith, 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 unfeasible, for so long as Business Associate, its subcontractors or agents, maintain such Protected Health Information. All obligations of Business Associate under Section 3 shall continue as long as such Protected Health Information is maintained by Business Associate and its subcontractors or agents.

6.4.3 Business Associate's obligations under this Section 6.4 shall survive the termination of this Agreement indefinitely.

6.4.4 Should this Agreement be terminated for cause by Covered Entity, such termination shall be considered a material default by Business Associate under any underlying agreement between it and Covered Entity and shall entitle Covered Entity to terminate that agreement.

SECTION 7. MISCELLANEOUS

7.1 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties hereto any rights, remedies, obligations, or liabilities whatsoever.

7.2 Amendment. This Agreement may not be modified or amended, except in writing signed by each Party. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA and the Privacy and Security Rules.

7.3 Survival. The respective rights and obligations of Business Associate under this Agreement shall survive the termination of this Agreement.

7.4 Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself, and any employees, subcontractors, or agents assisting Business Associate in the performance of its obligations under this Agreement and those agreements and arrangements

described in Section 2, available to Covered Entity, at no cost to Covered Entity, to testify, be deposed, or otherwise assist Covered Entity and its counsel in the event of litigation or administrative proceedings commenced against Covered Entity, its officers, directors, and employees, based upon a claimed violation of HIPAA, the Privacy and Security Rules, or other laws relating to security and/or privacy, except where Business Associate or its employee, subcontractor, or agent is named as an adverse party in the proceeding. The provisions of this Section shall survive the termination of this Agreement indefinitely.

7.5 Indemnification. Business Associate agrees to indemnify Covered Entity, its assignees and licensees, and hold each of them harmless from and against any and all claims, demands, losses, damages, liabilities, costs, and expenses, including legal fees, arising out of or by reason of any breach or alleged breach by Business Associate, its employees, subcontractors, or agents, of any of its obligations under this Agreement.

7.6 Notices. All notices required under this Agreement shall be deemed to have been properly served if delivered in writing personally, by recognized overnight delivery services (such as Federal Express), by facsimile (confirmed by telephone), or by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Covered Entity:
National Guardian Life Insurance Company
Two East Gilman Street
P.O. Box 1191
Madison, Wisconsin 53701-1191
Attention: President
Telephone: 608.257.5611
Fax: 608.257.4282

If to Business Associate:

Telephone: _____
Fax: _____

or such other place or places as either Party, by notice given in accordance with this Section, may designate in writing from time to time. All notices shall be effective upon receipt by the Party to be notified.

7.7 Governing Law. This Agreement shall be governed under the laws of the State of Wisconsin.

7.8 Recitals. The RECITALS set forth hereinabove are incorporated herein in their entirety.

7.9 Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument. For purposes hereof, facsimile copies hereof and facsimile signatures hereof shall be authorized and deemed effective.

7.10 Entire Agreement. This Agreement sets forth the entire agreement of the Parties hereto with respect to the subject matter hereof and supercedes all prior discussions and agreements, written or oral, with respect thereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

“COVERED ENTITY”

“BUSINESS ASSOCIATE”

NATIONAL GUARDIAN LIFE
INSURANCE COMPANY

By: _____

Patrick M Juarez
Vice President, Group Markets

By: _____

Name:
Title: