

HABERSHAM COUNTY BOARD OF COMMISSIONERS

EXECUTIVE SUMMARY

SUBJECT: SFY 2023-2024 Agreement with the Legacy Link

DATE: January 30, 2023

☒ **RECOMMENDATION**

☐ **POLICY DISCUSSION**

BUDGET INFORMATION:

☐ **STATUS REPORT**

ANNUAL- NA

☐ **OTHER**

CAPITAL-

COMMISSION ACTION REQUESTED ON: February 20, 2023

PURPOSE: To request Commission approval to adopt documents as part of our annual contract agreement with Legacy Link.

BACKGROUND / HISTORY: The requested forms are compliance documents required to begin the Request for Proposal (RFP) process. There is no cost associated until an RFP has been approved and the annual contract is created.

FACTS AND ISSUES: Required chairman signature on attached forms.

1. Business Associate Agreement - HIPPA regulation compliance related to client information.
2. Certification Regarding Lobbying – required to affirm reporting practices are in accordance with government guidelines.
3. Certification Regarding Debarment – required to affirm we are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency.
4. Contractual and Standard Program Assurances – required to assure operating procedures and guidelines are in place to execute program services as a condition of the contract.

OPTIONS:

- 1) Approve recommendation
 - 2) Deny recommendation
 - 3) Commission defined alternative
-

RECOMMENDED SAMPLE MOTION:

I make a motion to adopt documents as part of our annual contract agreement with Legacy Link.

DEPARTMENT:

Prepared by: Kathy Holcomb

Director: _____ Kathy Holcomb _____

ADMINISTRATIVE

COMMENTS: _____

DATE: _____
County Manager _____

CONTRACTUAL AND STANDARD PROGRAM ASSURANCES

The applicant/provider assures the following general condition will be met as a requirement for entering a contract with Legacy Link Area Agency on Aging for aging services:

1. Assures **compliance** with Older Americans Act, Social Services Block Grant, Community Care Services Program and other funding sources as well as all federal state laws, standards, policies and procedures. Also assures the **compliance** with Area Agency Administrative and Program requirements regarding administration and delivery of aging services.
2. Assures the **provision of training** for staff and volunteers as needed and /or required.
3. Assures the **priorities** established by the Area Agency on Aging for serving older persons **with greatest economic or social need** are addressed.
4. Assures the establishment of an **opportunity** for recipients of services to **voluntarily contribute toward Older American Act services provided**. Documentation of program income must be kept on file and reported monthly to Area Agency on Aging.
5. Assures that aging services will not be denied to any older person because they cannot or will not contribute toward the cost of the service for Title III services.
6. Assures that funds received through voluntary contributions from program participants will not be used to replace funds from other non-federal sources but will be used to **maintain or expand the services** for which the contribution were made.
7. Assures support from private or public sources to expand services funded through the Area Agency on Aging.
8. **Assures that criminal record checks are performed for all employees who have direct contact with program participants.**
9. Assures that provider will **supply an annual audit** in accordance with the provision of the 1359 Audit Law. Copies of all reports resulting from audits shall be furnished to the Area Agency on Aging no later than 120 days after the fiscal year ends as detailed in the current contract.
10. Assures **records relating to the aging programs are kept on file for at least five (5) years after the end of the contract period** or until such time as any claims resulting from appeals, grievances or litigation are resolved.
11. Assures that the Division of Aging Services (DAS) Database System (DDS) is used to track, account for, and report service delivery and financial data for all programs administered and funded by DAS.
12. Assures that all services provided under this program **meet current state and local licensure, safety and insurance requirements** for the provision of service.
13. Assures contracts for subcontracted services are submitted to Area Agency on Aging for review and approval **prior** to service delivery beginning.
14. Assures policies affecting agency staff have been developed, **including, but not limited to, written job descriptions for each position; evaluations of job performance; annual leave; sick leave; holiday schedules; normal working hours; and compensatory time. Personnel policies and hiring policies are in compliance with federal and state laws regarding employment and payroll practices.**

15. Assures written client grievance and personnel **grievance procedures have been developed and posted.**
16. Assures applicant has policies and procedures which **safeguard client confidentiality** including, prohibiting the release of any client's name; medical records or conditions; or other identifying information to any persons outside the agency without first obtaining the expressed consent of the client. The agency shall also require all subcontracting agencies performing services to adhere to a similar policy concerning client confidentiality. Assures that staff and volunteers keep confidential any client Personal Identifying Information (**PII**), and/or Protected health Information (**PHI**). AAA will require updated lists of staff and volunteers who have access to PII and PHI quarterly or sooner as updates are made.
17. Assures coordination with other aging programs and services in the community.
18. Assures **effective financial management of funds allocated to the aging programs** through the use of the Uniform Cost Methodology. Assure compliance with existing regulations and all relevant and current circulars from the Federal Office of Management and Budget for determination and allowability of costs in connection with federal/state contracts and grants.
19. Assures the **accurate and timely reporting of programmatic and financial information** to the Area Agency on Aging, state and federal government as required.
20. Assures a method is implemented to **obtain client feedback** on services provided to maintain quality of programs.
21. Assures **access to all programs and agency records** by the Area Agency on Aging, DHS Division of Aging Services and other federal or state auditors as needed, requested, or required.
22. Assures **cooperation in the use of any facility, equipment or resources owned or operated by DHS** which may be required in the event of a declared emergency or disaster.
23. Assures the Area Agency on Aging that there are a **minimum of two staff members** who are trained and able to enter the data and finalize monthly reporting requirements.
24. Assures the Area Agency on Aging that there are a **minimum of two staff members** who are trained and able to complete fiscal reports.
25. Assures passwords are not shared by individuals using the DAS Database System.
26. Assures provider is responsible for requesting access and requesting termination of access to the DAS Database System for staff.

I HAVE REVIEWED, UNDERSTAND AND AGREE TO ABIDE BY ALL
CONDITIONS AS STATED.

Date

Name of Contractor

Title

Signature of Legally Authorized Person

CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTION

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name and Title of Authorized Representative	Signature	Date
=====		
INSTRUCTIONS FOR CERTIFICATION		

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Telephone 202/245-0729).
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

By _____ Date _____
(Signature of Official Authorized to Sign)

Attachment A

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (hereinafter referred to as "Agreement") is made and entered into by and between The Legacy Link, Inc, Area Agency on Aging (hereinafter referred to as "AAA") and the _____ (Hereinafter referred to as "Contractor") as an attachment to Memorandum of Agreement between AAA and Contractor (hereinafter referred to as "Contract"). The effective date of this Agreement shall be the date the Contract referenced above is executed by Contractor.

WHEREAS, AAA is required by the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), to enter into a Business Associate Agreement with certain entities that provide functions, activities, or services involving the use of Protected Health Information, as defined by HIPAA;

WHEREAS, Contractor, under the Contract provides functions, activities, or services involving the use of Protected Health Information, as defined by HIPAA, and individually identifiable information ("PHI") protected by other state and federal law;

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, AAA and Contractor (each individually a "Party" and collectively the "Parties") hereby agree as follows:

1. Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms have in HIPAA and in Title XIII of the American Recovery and Reinvestment Act of 2009 (the Health Information Technology for Economic and Clinical Health Act, or "HITECH"), and in the implementing regulations of HIPAA and HITECH. Implementing regulations are published as the Standards for Privacy and Security of Individually Identifiable Health Information in 45 C.F.R. Parts 160 and 164. Together, HIPAA, HITECH, and their implementing regulations are referred to in this Agreement as the "Privacy Rule and Security Rule." If the meaning of any defined term is changed by law or regulation, then this Agreement will be automatically modified to conform to such change. The term "NIST Baseline Controls" means the baseline controls set forth in National Institute of Standards and Technology (NIST) SP 800-53 established for "moderate impact" information.
2. Except as limited in this Agreement, Contractor may use or disclose PHI only to the extent necessary to meet its responsibilities as set forth in the Contract provided that such use or disclosure would not violate the Privacy Rule or the Security Rule, if done by AAA. Furthermore, except as otherwise limited in this Agreement, Contractor may:
 - A. Use PHI for internal quality control and auditing purposes.
 - B. Use or disclose PHI as Required by Law.
 - C. After providing written notification to AAA , use PHI to make a report to a health oversight agency authorized by law to investigate AAA (or otherwise oversee the conduct or conditions of the AAA) about any AAA conduct that Contractor in good faith believes to be unlawful as permitted by 45 C.F.R. 164.502(j)(1). Notwithstanding the foregoing, Contractor shall not be required to provide prior written notice to AAA Privacy Officer if Contractor is provided

written instruction otherwise by the health oversight agency authorized by law to investigate AAA.

- D. Use and disclose PHI to consult with an attorney for purposes of determining Contractor's legal options with regard to reporting conduct by AAA that Contractor in good faith believes to be unlawful, as permitted by 45 C.F.R. 164.502(j)(1).
3. Contractor warrants that only individuals designated by title or name on **Attachments A-1** and **A-2** will request PHI from AAA or access AAA PHI in order to perform the services of the Contract, and these individuals will only request the minimum necessary amount of information necessary in order to perform the services.
4. Contractor warrants that the individuals listed by title on **Attachment A-1** require access to PHI in order to perform services under the Contract. Contractor agrees to send updates to **Attachment A-1** whenever necessary. Uses or disclosures of PHI by individuals not described on **Attachment A-1** are impermissible.
5. Contractor warrants that the individuals listed by name on **Attachment A-2** require access to a DHS information system in order to perform services under the Contract. Contractor agrees to notify the HCBS Program Manager, and the MIS Director named on **Attachment A-2** immediately, but at least within twenty-four (24) hours of any change in the need for DHS information system access by any individual listed on **Attachment A-2**.
6. Contractor warrants guidelines set forth by the Department of Aging Services allowing the AAA to collect names of all volunteers on **Attachment A-3 Non-DDS User** who may come into contact with client PHI or PII in order to assist in providing services to clients. Contractor agrees to send monthly updates to AAA of volunteer information by the 5th working day of each month.
- A. Any failure to report a change within the twenty-four (24) hour time period will be considered a security incident and may be reported to Contractor's Privacy and Security Officer, Information Security Officer and the Georgia Technology Authority for proper handling and sanctions.
7. Contractor agrees that it is a Business Associate to AAA as a result of the Contract, and warrants to AAA that it complies with the Privacy Rule and Security Rule requirements that apply to Business Associates and will continue to comply with these requirements. Contractor further warrants to AAA that it maintains and follows written policies and procedures to achieve and maintain compliance with the HIPAA Privacy and Security Rules and updates such policies and procedures as necessary in order to comply with the HIPAA Privacy and Security Rules that apply to Business Associates. These policies and procedures shall be provided to AAA upon request.
8. The Parties agree that a copy of all communications related to compliance with this Agreement will be forwarded to the following Privacy and Security Contacts:
 - A. At AAA:
 - Christine Bittle
HCBS Program Manager; Community Programs Director
cjbittle@legacylink.org
678-677-8474
 - Ashley Pitts
HIPAA Compliance Officer

apitts@legacylink.org
770-531-2560

B. At Contractor: _____

9. Contractor agrees that it will:

- A. Not request, create, receive, use or disclose PHI other than as permitted or required by this Agreement, the Contract, or as required by law.
- B. Establish, maintain and use appropriate administrative, physical and technical safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement or the Contract. Such safeguards must include all NIST Baseline Controls, unless DHS has agreed in writing that the control is not appropriate or applicable.
- C. Implement and use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of AAA/DHS. Such safeguards must include all NIST Baseline Controls, unless DHS has agreed in writing that the control is not appropriate or applicable.
- D. In addition to the safeguards described above, include access controls that restrict access to PHI to the individuals listed on **A-1** and **A-2**, as amended from time to time, and shall implement encryption of all electronic PHI during transmission and at rest.
- E. Upon DHS' reasonable request, but no more frequently than annually, obtain an independent assessment of Contractor's implementation of the NIST Baseline Controls and the additional safeguards required by this Agreement with respect to DHS PHI, provide the results of such assessments to DHS, and ensure that corrective actions identified during the independent assessment are implemented.
- F. Mitigate, to the extent practicable, any harmful effect that may be known to Contractor from a use or disclosure of PHI by Contractor in violation of the requirements of this Agreement, the Contract or applicable regulations. Contractor shall bear the costs of mitigation, which shall include the reasonable costs of credit monitoring or credit restoration when the use or disclosure results in exposure of information commonly used in identity theft.
- G. Ensure that its agents or subcontractors to whom it provides PHI are contractually obligated to comply with at least the same obligations that apply to Contractor under this Agreement, and ensure that its agents or subcontractors comply with the conditions, restrictions, prohibitions and other limitations regarding the request for, creation, receipt, use or disclosure of PHI, that are applicable to Contractor under this Agreement and the Contract.
- H. Except for "Non-Reportable Incidents," report to AAA any use or disclosure of PHI that is not provided for by this Agreement or the Contract of which it becomes aware. Non-Reportable Incidents are limited to the following:

- i. the unintentional acquisition, access, or use of PHI by a workforce member of Contractor acting under the authority of Contractor, so long as the PHI is not further acquired, accessed, used or disclosed in an impermissible manner;
 - ii. the inadvertent disclosure of PHI from a person designated in **A-1** or **A-2** as authorized to access DHS PHI to a workforce member of Contractor who is not designated in **A-1** or **A-2**, but is authorized to access other Protected Health Information maintained by Contractor, so long as the information is not further acquired, accessed, used or disclosed in an impermissible manner.
- I.** Make an initial report to AAA in writing in such form as AAA may require within three (3) business days after Contractor (or any subcontractor) becomes aware of the unauthorized use or disclosure. This report will require Contractor to identify the following:
 - i. The nature of the impermissible use or disclosure (the “incident”), which will include a brief description of what happened, including the date it occurred and the date Contractor discovered the incident;
 - ii. The PHI involved in the impermissible use or disclosure, such as whether the full name, social security number, date of birth, home address, account number or other information were involved;
 - iii. Who (by title, access permission level and employer) made the impermissible use or disclosure and who received the PHI as a result;
 - iv. What corrective or investigational action Contractor took or will take to prevent further impermissible uses or disclosures, to mitigate harmful effects, and to prevent against any further incidents;
 - v. What steps individuals who may have been harmed by the incident might take to protect themselves; and
 - vi. Whether Contractor believes that the impermissible use or disclosure constitutes a Breach of Unsecured PHI.

Upon request by the AAA HCBS Program Manager and HIPAA Compliance Officer, Contractor agrees to make a complete report to the AAA in writing within two (2) weeks of the initial report that includes a root cause analysis and a proposed corrective action plan. Upon approval of a corrective action plan by the AAA, Contractor agrees to implement the corrective action plan and provide proof of implementation to the AAA within five (5) business days of AAA’s request for proof of implementation.

- J.** Report to the AAA HCBS Program Manager and HIPAA Compliance Officer any successful unauthorized access, modification, or destruction of PHI or interference with system operations in Contractor’s information systems as soon as practicable but in no event later than three (3) business days of discovery. If such a security incident resulted in a use or disclosure of PHI not permitted by this Agreement, Contractor shall also make a report of the impermissible use or disclosure as described above. Contractor agrees to make a complete report to the AAA in writing within two weeks of the initial report that includes a root cause

analysis and, if appropriate, a proposed corrective action plan designed to protect PHI from similar security incidents in the future. Upon AAA's approval of Contractor's corrective action plan, Contractor agrees to implement the corrective action plan and provide proof of implementation to the AAA.

- K.** Upon AAA's reasonable request and not more frequently than once per quarter, report to the AAA HIPAA Compliance Officer any (A) attempted (but unsuccessful) unauthorized access, use, disclosure, modification, or destruction of PHI or (B) attempted (but unsuccessful) interference with system operations in Contractor's information systems. Contractor does not need to report trivial incidents that occur on a daily basis, such as scans, "pings," or other routine attempts that do not penetrate computer networks or servers or result in interference with system operations.
- L.** Cooperate with AAA and provide assistance necessary for AAA to determine whether a Breach of Unsecured PHI has occurred, and whether notification of the Breach is legally required or otherwise appropriate. Contractor agrees to assist AAA in its efforts to comply with the HIPAA Privacy and Security Rules, as amended from time to time. To that end, the Contractor will abide by any requirements mandated by the HIPAA Privacy and Security Rules or any other applicable laws in the course of this Contract. Contractor warrants that it will cooperate with AAA, including cooperation with AAA privacy officials and other compliance officers required by the HIPAA Privacy and Security Rules and all implementing regulations, in the course of performance of this Contract so that both Parties will be in compliance with HIPAA.
- M.** If AAA determines that a Breach of Unsecured PHI has occurred as a result of Contractor's impermissible use or disclosure of PHI or failure to comply with obligations set forth in this Agreement or in the Privacy or Security Rules, provide all notifications to Individuals, HHS and/or the media, on behalf of AAA, after the notifications are approved by the AAA. Contractor shall provide these notifications in accordance with the security breach notification requirements set forth in 42 U.S.C. §17932 and 45 C.F.R. Parts 160 & 164 subparts A, D & E as of their respective Compliance Dates, and shall pay for the reasonable and actual costs associated with such notifications.

In the event that AAA determines a Breach has occurred, without unreasonable delay, and in any event no later than thirty (30) calendar days after Discovery, Contractor shall provide the AAA HIPAA Compliance Officer a list of Individuals and a copy of the template notification letter to be sent to Individuals. Contractor shall begin the notification process only after obtaining AAA's approval of the notification letter.

- N.** Make any amendment(s) to PHI in a Designated Record Set that DHS directs or agrees to pursuant to 45 CFR 164.526 within five (5) business days after request of AAA. Contractor also agrees to provide AAA with written confirmation of the amendment in such format and within such time as AAA may require.
- O.** In order to meet the requirements under 45 CFR 164.524, regarding an individual's right of access, within five (5) business days following AAA's request, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the AAA, provide AAA access to the PHI in an individual's Designated Record Set. However, if requested by AAA, Contractor shall provide access to the PHI in a Designated Record Set directly to the individual to whom such information relates.

- P.** Give the Secretary of the U.S. Department of Health and Human Services (the "Secretary") or the Secretary's designees access to Contractor's books and records and policies, practices or procedures relating to the use and disclosure of PHI for or on behalf of DHS within five (5) business days after the Secretary or the Secretary's designees request such access or otherwise as the Secretary or the Secretary's designees may require. Contractor also agrees to make such information available for review, inspection and copying by the Secretary or the Secretary's designees during normal business hours at the location or locations where such information is maintained or to otherwise provide such information to the Secretary or the Secretary's designees in such form, format or manner as the Secretary or the Secretary's designees may require.
- Q.** Document all disclosures of PHI and information related to such disclosures as would be required for AAA to respond to a request by an Individual or by the Secretary for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. By no later than five (5) business days of receipt of a written request from AAA, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the AAA HIPAA Compliance Officer, Contractor shall provide an accounting of disclosures of PHI regarding an Individual to AAA. If requested by AAA, Contractor shall provide an accounting of disclosures directly to the individual. Contractor shall maintain a record of any accounting made directly to an individual at the individual's request and shall provide such record to the AAA upon request.
- R.** Work in good faith with AAA to promptly resolve any dispute, controversy or claim arising out of or relating to a violation of the HIPAA Privacy and Security Rules or Breach that arises from the conduct or omission of Business Associate or its employee(s), agent(s) or subcontractor(s). Business Associate acknowledges that such a violation of the HIPAA Privacy and Security Rules or breach of this Agreement may result in financial harm to AAA, including, but not limited to, damages, fines, civil penalties and reasonable attorneys' fees imposed on AAA as a result of such conduct or omission. Business Associate agrees to act in good faith to mitigate such financial harm to AAA, including, but not limited to, pursuing or assisting AAA in its pursuit of any financial recovery available through insurance or other financial coverage maintained by the Department of Administrative Services or any successor entity, pursuing any financial recovery available through Business Associate's contracts with its agents or subcontractors as applicable, or taking such other action as determined reasonable by AAA and the Business Associate taking into consideration State budgetary requirements and restrictions.

10. AAA agrees that it will:

- A.** Notify Contractor of any new limitation in AAA's Notice of Privacy Practices in accordance with the provisions of the Privacy Rule if, and to the extent that, AAA determines in the exercise of its sole discretion that such limitation will affect Contractor's use or disclosure of PHI.
- B.** Notify Contractor of any change in, or revocation of, authorization by an Individual for AAA to use or disclose PHI to the extent that AAA determines in the exercise of its sole discretion that such change or revocation will affect Contractor's use or disclosure of PHI.

- C. Notify Contractor of any restriction regarding its use or disclosure of PHI that AAA has agreed to in accordance with the Privacy Rule if, and to the extent that, AAA determines in the exercise of its sole discretion that such restriction will affect Contractor's use or disclosure of PHI.
- D. Prior to agreeing to any changes in or revocation of permission by an Individual, or any restriction, to use or disclose PHI, AAA agrees to contact Contractor to determine feasibility of compliance. Following the receipt by AAA of a written cost estimate, AAA agrees to assume all costs incurred by Contractor in compliance with such special requests.

11. The **Term of this Agreement** shall be effective on the Effective Date and shall terminate when all of the PHI provided by AAA to Contractor, or created or received by Contractor on behalf of AAA, is destroyed or returned to AAA, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this section.

A. **Termination for Cause.** Upon AAA's knowledge of a material breach of this Agreement by Contractor, AAA shall either:

- i. Provide an opportunity for Contractor to cure the breach of Agreement within a reasonable period of time, which shall be within thirty (30) calendar days after receiving written notification of the breach by DHS;
- ii. If Contractor fails to cure the breach of Agreement, terminate the Contract upon thirty (30) calendar days' notice; or
- iii. If neither termination nor cure is feasible, AAA shall report the breach of Agreement to the Secretary of the Department of Health and Human Services.

B. **Effect of Termination.**

- i. Upon termination of this Agreement, for any reason, AAA and Contractor shall determine whether return of PHI is feasible. If return of the PHI is not feasible, Contractor agrees to continue to extend the protections of this Agreement to the PHI for so long as the Contractor maintains the PHI and shall limit the use and disclosure of the PHI to those purposes that made return or destruction of the PHI infeasible. If at any time it becomes feasible to return or destroy any such PHI maintained pursuant to this paragraph, Contractor must notify AAA and obtain instructions from AAA for either the return or destruction of the PHI.
- ii. Contractor agrees that it will limit its further use or disclosure of PHI only to those purposes AAA may, in the exercise of its sole discretion, deem to be in the public interest or necessary for the protection of such PHI, and will take such additional actions as AAA may require for the protection of patient privacy and the safeguarding, security and protection of such PHI.
- iii. This Effect of Termination section survives the termination of the Agreement.

12. **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit AAA to comply with applicable laws, rules and regulations, the HIPAA Privacy Rule, the HIPAA Security Rule and any rules, regulations, requirements, rulings, interpretations, procedures or other actions related thereto

that are promulgated, issued or taken by or on behalf of the Secretary; provided that applicable laws, rules and regulations and the laws of the State of Georgia shall supersede the Privacy Rule if, and to the extent that, they impose additional requirements, have requirements that are more stringent than or have been interpreted to provide greater protection of patient privacy or the security or safeguarding of PHI than those of the HIPAA Privacy Rule.

13. 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 and the respective successors or assigns of the Parties, any rights, remedies, obligations or liabilities whatsoever.

14. All other terms and conditions contained in the Contract and any amendment thereto, not amended by this Agreement, shall remain in full force and effect.

IN WITNESS WHEREOF, Contractor, through its authorized officer and agent, has caused this Agreement to be executed on its behalf as of the date indicated.

Contractor Name: _____

BY: _____
SIGNATURE DATE

TITLE*

* Must be President, Vice President, CEO or Other Officer Authorized to Execute on Behalf of and Bind the Entity to a Contract