

## BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT is made and entered into by and between Newman Long Term Care (referred to herein as the "Company") and "Business Associate".

### AGREEMENT:

The parties agree to satisfy the standards and requirements related to the privacy and security of protected health information (PHI) used by, or disclosed to, Business Associate as established in the Health Insurance Portability and Accountability Act of 1996, and the accompanying regulations promulgated by the U.S. Department of Health and Human Services 45 C.F.R. Parts 160, 162, and 164, ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, ("HITECH Act") and other applicable state and federal laws and regulations.

The enhanced HIPAA privacy requirements including but not necessarily limited to accounting for certain PHI, restrictions on the sale of PHI, restrictions on marketing and fundraising communications, and payment and health care operations contained in Subtitle D of the HITECH Act that may apply to the Company shall equally apply to Business Associate.

### SECTION II -- SCOPE

This Agreement applies to all present and future agreements and relationships, whether written, oral or implied, between the Company and Business Associate, pursuant to which PHI is created, maintained, received or transmitted by Business Associate directly or on behalf of the Company or Covered Entities we represent in any form or medium whatsoever. As of the effective date of this Agreement, this Agreement automatically extends to and amends all existing agreements between the Company and Business Associate involving the Use or Disclosure of PHI and PII. This Agreement shall automatically be incorporated into all subsequent agreements between the Company and Business Associate involving the creation, maintenance, use or disclosure of PHI and PII whether or not expressly referenced therein. In the event of any conflict between the terms and conditions stated within this Agreement and those contained within any other agreement or understanding between the parties, written, oral or implied, the terms of this Agreement shall govern.

### SECTION III – RESTRICTIONS ON YOUR ACTIVITIES

- 1) Using information you acquire
  - a) To the extent you and your representatives are permitted to send Application or Carrier Contracting Documents to the Company in a HIPAA/HITECH approved secured electronic format, you agree to:
    - i) Comply with any Company request for you or your representatives to send in original Documents for processing, audit or any other business purpose deemed necessary by the Company.
    - ii) Destroy any original Documents that are beyond the Retention Period by shredding or disposing of them according to the HHS recommended NIST Special Publication 800-88 that provided guidance for effective information disposal so they are not legible or capable of being reconstructed.

### SECTION IV – TERMINATION

- 1) This Agreement may be terminated by either party for any reason without "cause" by giving the other party at least the longer of (a) ten (10) days prior written notice, or (b) the minimum prior written notice required by law. For "cause," the Company may terminate this Agreement immediately without any prior notice to you. The Company may deem this Agreement to have been terminated for "cause," if, after the Agreement terminates without cause, you violate the provisions of this section V.
- 2) For purposes of this Agreement, "cause" shall include, but not be limited to the following:
  - a) willful violation of the laws, rules, or regulations of any jurisdiction or any governmental authority exercising jurisdiction over you; and
  - b) willful violation or breach of any material terms or provisions of this Agreement such as the provisions relation to Use of Nonpublic Information and Confidentiality. The Company may provide opportunity for Business Associate to cure the breach or end the violation within a time specified depending on the severity of the occurrence.
- 3) Upon termination of this Agreement for any reason, Business Associate agrees either to return to Company or to destroy all PHI received from Company or otherwise through the performance of services for Company, that is in the possession or control of Business Associate or its agents. In the case of information for which it is not feasible to "return or destroy," Business Associate shall provide to Company notification of the conditions that make return or destruction infeasible, and continue to comply with the covenants in this Agreement with respect

to such PHI and shall comply with other applicable state and federal laws, which may require a specific period of retention, redaction, or other disposition.

- 4) Ineligible Persons. Business Associate represents and warrants to Company that Business Associate (i) is not currently excluded, debarred or otherwise ineligible to participate in any federal health care program as defined in 42 U.S.C. Section 1320a-7b(f) ("the Federal Healthcare Programs"); (ii) has not been convicted of a criminal offense related to the provision of health care items or services and not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs, and (iii) is not under investigation or otherwise aware of any circumstances which may result in Business Associate being excluded from participation in the Federal Healthcare Programs. This shall be an ongoing representation and warranty during the term of this Agreement, and Business Associate shall immediately notify Company of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give Company the right to terminate this Agreement immediately for cause.

## **SECTION V – IDEMNIFICATION**

- 1) You agree to indemnify and hold the Company and its affiliates, including the Company's and its affiliates' officers, directors, employees, agents and/or representatives, harmless from any and all expenses, attorney fees, costs, causes of action, liability, claim and damages resulting from and in consequence of:
  - a) Any material violation of the provisions of this Agreement, including but not limited to provisions relating to Use of Nonpublic Information; Confidentiality and Security Safeguards, by Business Associate, its employees or General Agency associates; or failure to perform obligations under all applicable Privacy and Security regulations and state laws, by Business Associate or its employees, directors, officers, subcontractors or agents. Accordingly, on demand, Business Associate shall reimburse any indemnified party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorney fees) which may for any reason be imposed upon any indemnified party by reason of any suit, claim, action, proceeding or demand by any third party which results from said breach hereunder. The parties' obligation to indemnify any indemnified party shall survive the expiration or termination of the Agreement or addendum for any reason.
  - b) The Company agrees to indemnify and hold Business Associate harmless from any and all expenses, Attorney fees, costs, causes of action and damages resulting from and in consequence of:  
The negligence, recklessness or intentional misconduct of the Company or its employees.
  - c) The provisions of this Section shall survive the termination of this Agreement.

## **SECTION VI – USE OF NON-PUBLIC INFORMATION; CONFIDENTIALITY AND SECURITY SAFEGUARDS**

1. Confidentiality Obligations and Representations. Except as expressly authorized by prior written consent of the disclosing party, each party shall and represents and warrants that it has the capacity to:
  - a) ensure that all uses and disclosures of PHI are subject to the principle of "minimum necessary use and disclosure," i.e., that only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request is used or disclosed; and, the use of limited data sets when possible.
  - b) safeguard all such Confidential Information and Consumer Information (PII or PHI) it receives by implementing and maintaining appropriate administrative, technical and physical safeguards to ensure the security and confidentiality of these and protect against any anticipated threats or hazards or unauthorized access to our use of Confidential Information and Consumer Information (PII or PHI) which could result in substantial harm or inconvenience to any Consumer.
2. Security Safeguards. In the event that the Business Associate creates, maintains, receives, transmits, discloses, uses or otherwise exchanges data electronically, in addition to the other provisions of this Agreement, Business Associate shall abide by the terms and conditions of this Section.
3. Information Safeguards. Business Associate shall develop, implement, maintain and use, at its own expense, such appropriate administrative, technical and physical safeguards as may be required to maintain compliance with HIPAA, the HITECH Act, and any other applicable laws and regulations, and to preserve the availability, integrity and confidentiality of PHI that it receives, maintains and transmits to prevent non-permitted or violating Use or Disclosure of PHI. Business Associate shall ensure that any agent, employee (including a subcontractor), or third party to whom the Business Associate provides PHI implements reasonable and appropriate safeguards to protect PHI as required under this Section and documents such safeguards in writing and makes such written safeguards available to the Company upon request.

4. Personnel Changes. Any personnel changes by Business Associate, eliminating the legitimate business needs for employees, agents or contractors access to PHI – either by revision of duties or termination – shall be immediately reported to Company. Such reporting shall be made no later than the **third** business day after the personnel change becomes effective.
5. Awareness & Training. Business Associate agrees to provide information and training to members of its workforce using or disclosing PHI regarding the confidentiality requirements of the HIPAA Rules and this Agreement. Business Associate agrees to review and understand all applicable HIPAA and HITECH Rules as it applies to Business Associate, and to comply with the applicable requirements of the HIPAA and HITECH Rule, as well as any applicable amendments.
6. Unauthorized Use. The Business Associate shall immediately report, as further described below, to the Company's designated Compliance Officer any successful Security Incident of which the Business Associate or any agent, employee (including a subcontractor), or third party of the Business Associate becomes aware of any unauthorized access, use, disclosure, modification or destruction of PHI or PII or interference with system operations that affect a Consumers or Producers PHI and/or PII. For other Security Incidents (e.g. an attempted, but unsuccessful, unauthorized access or use), Business Associate shall document such incidents and any changes or remedial procedures adopted to address such incidents, and provide aggregate reports of the same to the Company on request.
7. In the Confidentiality Obligations in regards to Company Information Systems: if a Business Associate is provided any access to any Company or Affiliate information system or network containing any electronic PHI or PII, the Business Associate hereby agrees to comply with all the Company and Affiliate policies for access to and use of information from the information systems or network and all other Laws that govern electronic PHI and PII.
8. HIPAA Data Breach Notification and Mitigation. Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any "breach" of "unsecured PHI" as those terms are defines by 45 C.F.R. §164.402 and HITECH Section 13401, et seq. (hereinafter a "HIPAA Breach"). The parties acknowledge and agree that 45 C.F.R. §164.404, as described below, governs the determination of the date of a HIPAA Breach. In the event of any conflict between this section and any other the Confidentiality Requirements, the more stringent requirements shall govern. Business Associate will, following the discovery of a HIPAA Breach, notify Company immediately and in no event later than **three (3)** business days after Business Associate discovers such HIPAA Breach, unless Business Associate is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations. For purposes of reporting a HIPAA Breach to Company, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to the Business Associate, or by exercising reasonable diligence, would have been known to the Business Associate. Business Associate will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been know, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of the Business Associate. No later than **seven (7)** business days following a HIPAA Breach, Business Associate shall provide Company with sufficient information to permit Company to comply with the HIPAA Breach notification requirements set for at 45 C.F.R. §164.400 et seq. Specifically, if information is known to (or can be reasonably obtained by) the Business Associate, Business Associate will provide Company with those notification elements as set forth in Sec 164.400 et seq.
9. Data Breach Notification and Mitigation Under Other Laws. In addition to the above-cited requirements, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as "Individually identifiable Information") that, if misused, disclosed, lost or stolen, Company believes would trigger an obligation under one or more State data breach notification laws (each as "State Breach") to notify the individuals who are the subject of the information. Business Associate agrees that in the event any Individually Identifiable Information is lost, stolen, used or disclosed in violation of one or more State data breach notification laws, Business Associate shall promptly; (i) cooperate and assist Company with any investigation into any State Breach or alleged State Breach; (ii) cooperate and assist Company with any investigation into any State Breach or alleged State Breach conducted by any State Attorney General or State Consumer Affairs Department (or their respective agents); (iii) comply with Company's determinations regarding Company's and Business Associate's obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (iv) assist with the implementation of any decision by Company or any State agency, including any State Attorney General or State Consumer Affairs Department (or their respective agents), to notify individuals impacted or potentially impacted by a State Breach.

10. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement

## **SECTION VII – RECORD KEEPING AND AUDITS**

1. Business Associate agrees to keep appropriate records of the services provided under this Agreement as required by Law or as reasonably requested by Company or an Affiliate in accordance with its policies, procedures and standards including establishing and documenting procedures for mitigating any deleterious effects of any improper Use and/or Disclosure of PHI or PII of which either the Company or Business Associate becomes aware. In conjunction with this requirement, Business Associate agrees that Company can audit, at times reasonably agreed to by the parties, Business Associate's compliance with record keeping requirements.
2. Business Associate agrees to cooperate with the Company or any of its Affiliates to provide them with documentation within forty-eight hours of request of anything relevant to any regulatory examination or investigation of the Company or by other investigations by state insurance regulators or other state or federal regulators.
3. Accounting of Disclosures. Business Associate shall make available to Company in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual, in accordance with 45 CFR § 164.528, as amended by Section 13405(c) of the HITECH Act and any related regulations or guidance issued by HHS in accordance with such provision. Business Associate shall provide to Company such information necessary to provide an accounting within **thirty (30)** days of Company's request or such shorter time as may be required by state or federal law. Such accounting must be provided without cost to the individual or to Company if it is the first accounting requested by an individual within any twelve (12) month period. For subsequent accountings within a twelve (12) month period, Business Associate may charge a reasonable fee based upon the Business's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies) so long as Business Associate informs the Company and the Company informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination of this Agreement and shall continue as long as Business Associate maintains PHI.
4. Withdrawal of Consent or Authorization. If the use or disclosure of PHI in this Agreement is based upon an individual's specific consent or authorization for the use of his or her PHI, and (i) the individual revoked such consent or authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Privacy Standards expressly applies.

## **SECTION VIII – MISCELLANEOUS PROVISIONS**

1. Injunctive Relief. Business Associate acknowledges and agrees that a breach of the covenants contained in this Agreement will cause irreparable harm to the Company and that damages arising from any such breach may be difficult to ascertain and no adequate legal remedy exists. Accordingly, the Company shall be entitled to receive injunctive relief and/or specific performance and damages, as well as any and all legal or equitable remedies to which it may be entitled.
2. Amendment. No amendment to this Agreement shall be effective until reduced to writing and signed by the parties. Notwithstanding the foregoing, this Agreement shall be deemed automatically amended to the extent necessary for the Company and Business Associate to continue to comply with the requirements of HIPAA, HITECH and their implementing regulations, including, without limitation, the Privacy Rule, the Security Rule the Breach Notification Rule, and all other applicable laws relating to the security and confidentiality of protected health information and personally identifiable information, as those requirements may be amended from time to time.

## **SECTION IX – EMAIL OPT-IN**

I opt-in to receiving email newsletters from Newman Long Term Care. This includes (but is not limited to) communications on product news, marketing ideas, sales tips, training opportunities and other industry updates. I understand that my email address will not be sold or given to any third parties.