

HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this "Agreement") is effective as of January 1, 2013 and is among Clay County District Schools ("Client"), the group health plans of the Client (each a "Covered Entity" and collectively, the "Covered Entities") and Aon Consulting, Inc. and its affiliated entities ("Aon", and together with the Client and the Covered Entities, the "Parties"). From time to time, Aon may agree orally or in writing with the Client (such agreements referred to herein as the "Consulting Services Agreement") to provide certain Consulting Services (as hereinafter defined). To the extent that Aon uses or discloses PHI (as hereinafter defined) to perform the Consulting Services, this Agreement shall describe the Parties' rights, duties and obligations with respect to the treatment of such PHI. This Agreement shall supersede any conflicting or inconsistent terms and provisions of any Consulting Services Agreement, unless agreed to otherwise therein.

Witnesseth:

Whereas, the Parties wish to supplement the Consulting Services Agreement to provide for the privacy of certain information it uses and discloses in the course of providing the Consulting Services to facilitate compliance with HIPAA (as hereinafter defined);

Whereas, Client, as plan sponsor of the Covered Entities, has the authority to execute documents on behalf of each Covered Entity;

Whereas, the Parties acknowledge and agree that Aon performs the Consulting Services on behalf of the Client, but to the extent HIPAA applies, may perform certain of the Consulting Services on behalf of the Covered Entities; and

Whereas, with respect to Aon's performance of Consulting Services performed on behalf of the Covered Entities, Aon is a Business Associate of the Covered Entities.

Now, therefore, for and in consideration of the mutual agreements, terms, covenants and conditions herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Terms.

Capitalized terms used in this Agreement and not otherwise defined herein or in the Consulting Services Agreement shall have the meanings set forth in HIPAA which definitions are hereby incorporated by reference. The terms "use", "disclose" and "discovery", or derivations thereof, although not capitalized, shall also have the same meanings set forth in HIPAA and its implementing regulations.

- (a) "Consulting Services" shall mean various health management consulting projects that Aon performs from time to time, including without limitation, those performed pursuant to the Consulting Services Agreement, and that involve the use of PHI, but shall not include any benefits outsourcing services.
- (b) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Pub. L. no. 104-191 (the "Act"), the privacy standards adopted by the U.S.

Department of Health and Human Services (“HHS”) as they may be amended from time to time, 45 C.F.R. parts 160 and 164, subparts A and E (the “Privacy Rule”), the security standards adopted by HHS as they may be amended from time to time, 45 C.F.R. parts 160, 162 and 164 subparts C (the “Security Rule”), and the Privacy provisions (Subtitle D) of the Health Information Technology and for Economic Clinical Health Act, Division A, Title XIII of Pub. L. No. 111-5, and its implementing regulations (the “HITECH Act”).

- (c) “PHI” shall mean Protected Health Information as defined in HIPAA, except that PHI shall be limited to information received, used or disclosed by Aon to provide Consulting Services on behalf of the Covered Entities as permitted hereunder.
- (d) “Required by Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.
- (e) “Secretary” shall mean the Secretary of HHS or the designee of the Secretary of HHS.

2. **Obligations and Activities of Aon.**

- (a) **Permissible Uses and Disclosures.** Aon agrees to use or disclose PHI only as permitted or required by this Agreement, the Consulting Services Agreement, as Required by Law, to perform the Consulting Services or as directed by a Covered Entity or the Client.
- (b) **Safeguards.** Aon agrees to use appropriate safeguards to prevent use or disclosure of PHI by Aon other than as provided for by this Agreement.
- (c) **Mitigation.** Aon agrees to mitigate, to the extent practicable, any harmful effect that is known to Aon resulting from a use or disclosure of PHI by Aon in violation of the requirements of this Agreement.
- (d) **Impermissible Uses and Disclosures.** Aon agrees to report to the Client, who will report to the Covered Entities, any use or disclosure of PHI by Aon not permitted or required by this Agreement or the Consulting Services, of which Aon becomes aware.
- (e) **Security.** As of the effective date of this Agreement, Aon shall:
 - (i) as required by the HITECH Act, implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI that Aon creates, receives, maintains, or transmits; and
 - (ii) report to the Covered Entities any Security Incident of which Aon becomes aware. Security Incidents shall not include, without limitation, pings and other broadcast attacks on Aon’s firewall, port scans, unsuccessful log-on

attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.

- (f) **Breaches.** Aon agrees to report to the Covered Entity any Breach in compliance with 45 C.F.R. § 164.410 of which it becomes aware as soon as reasonably practicable. Pursuant to 45 C.F.R. § 164.404, such report will include, among other relevant information a description of the Breach, date of the Breach, date of discovery of the Breach, the amount and type of PHI that was disclosed, and the steps taken to prevent further harm.
- (g) **Agents.** Aon agrees to enter into a business associate agreement with any agent, including a subcontractor, to whom it provides PHI. Such business associate agreement shall contain the same or similar restrictions and conditions at least as stringent as those that apply through this Agreement to Aon with respect to such information.
- (h) **Governmental Audits.** Aon agrees to make its internal practices, books, and records, including policies and procedures, and PHI, relating to the use and disclosure of PHI available to the Secretary for purposes of the Secretary determining any Covered Entity's compliance with HIPAA. Covered Entity shall, or shall cause the Client to advise Aon in writing within ten (10) business days of any receipt from the Secretary of any such request.
- (i) **Accounting of Disclosures.** Upon Aon's reasonable determination that it has received a request by an Individual for an accounting of disclosures of PHI, pursuant to 45 C.F.R. § 164.528, Aon shall provide, in writing, within sixty (60) days of such request information regarding an accounting. Aon shall not be required to document any disclosures the Covered Entity would not be required to account for under HIPAA, including without limitation, those described at 45 C.F.R. § 164.528, or (ii) that occurred prior to the effective date of this Agreement. For repetitive disclosures Aon makes to the same person or entity (including to a Covered Entity) for a single purpose, Aon may provide (i) the disclosure information for the first of these repetitive disclosures, (ii) the frequency, periodicity or number of these repetitive disclosures and (iii) the date of the last of these repetitive disclosures. The Parties agree that Aon's disclosures of PHI to perform the Consulting Services are made on behalf of the Covered Entities for their Treatment, Payment or Health Care Operations. Accordingly, Aon shall not be required to track and provide for an accounting of such disclosures.
- (j) **Access to PHI.** Upon Aon's reasonable determination that it has received a request from an Individual to make PHI available in accordance with 45 C.F.R. § 164.524, Aon shall make available within thirty (30) days of such request, the PHI in its possession at the time of the request that is contained in a Designated Record Set for that Covered Entity. Aon shall provide such information in the format routinely used for the exchange of such information in connection with Consulting Services.

Amending PHI. Upon Aon's reasonable determination that it has received a request from an Individual to amend PHI in accordance with 45 C.F.R. § 164.526, it shall

amend, within sixty (60) days, the PHI in its possession at the time of the request contained in the Designated Record Set for that Individual. If the Individual requests that Aon make an amendment that Aon is not permitted to make pursuant to the terms of the Consulting Services Agreement, then Aon shall refer such Individual to the Client or the Covered Entity. Aon shall provide such information in the format routinely used for the exchange of such information in connection with Consulting Services. The appropriate Covered Entity shall cause Client to amend such information and return such amended information to Aon in the format Client routinely transmits such information to Aon in connection with the Consulting Services. Such corrected information shall not constitute PHI until used or disclosed by Aon on behalf of a Covered Entity as provided for herein.

3. Permitted uses and disclosures by Aon.

- (a) Aon may use or disclose PHI as permitted or required by this Agreement, the Consulting Services, as Required by Law, to perform the Consulting Services, or as directed by the Covered Entity or Client, provided that such use or disclosure would not violate the Privacy Rule if done by the Covered Entity or Client.
- (b) Aon may use PHI for the proper management and administration of Aon, to carry out the legal responsibilities of Aon, or as Required by Law.
- (c) Aon may disclose PHI for the proper management and administration of Aon or to carry out legal responsibilities provided that such disclosures are (i) Required by Law, or (ii) Aon obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Aon of any instances of which it is aware in which the confidentiality of the information has been breached.
- (d) Aon may use PHI to provide Data Aggregation services to the Covered Entities as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- (e) Aon may use or disclose PHI to the extent and for purposes authorized by the Individual.
- (f) Aon is authorized to use and disclose PHI to de-identify the information pursuant to 45 C.F.R. § 164.514(b).
- (g) Aon may use and disclose PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

4. Obligations, Covenants and Warranties. Each Covered Entity hereby agrees, covenants and warrants to, or cause the Client to:

- (a) Notify Aon of any limitation(s) in their respective notice of privacy practices to the extent that such limitation may affect Aon's use or disclosure of PHI.

- (b) Notify Aon of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Aon's use or disclosure of PHI.
- (c) Notify Aon of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Aon's use or disclosure of PHI.
- (d) Obtain all Authorizations necessary for any use or disclosure of any PHI as contemplated pursuant to the Consulting Services.

5. **Agreement Regarding Use and Disclosure.** The Parties agree, or represent and warrant as the case may be, as follows:

- (a) **Uses and Disclosures.** Neither the Covered Entities nor the Client shall request that Aon use or disclose PHI in any manner that would not be permissible under HIPAA.
- (b) **Individuals.** Aon may direct any Individual to the appropriate Covered Entity, or to Client at such Covered Entity's direction, to permit fulfillment of such Covered Entity's obligations under 45 C.F.R. § 164.522, 45 C.F.R. § 164.524, 45 C.F.R. § 164.526 and 45 C.F.R. § 164.528.
- (c) **Purpose.** The purpose of this Agreement is to address obligations imposed by HIPAA. The Consulting Services are provided to Client by Aon. However, the Parties hereby acknowledge that some Consulting Services may be performed on behalf of the Covered Entities. Notwithstanding anything herein to the contrary, Client's payment obligations under the Consulting Services Agreement, or with respect to the Consulting Services provided to Client by Aon (as the case may be), shall not be diminished by this Agreement, and Client's performance obligations shall not be diminished, amended, changed or modified by this Agreement.
- (d) **Minimum Necessary.** The Parties agree to limit the use, disclosure or request for PHI to the amount and content of PHI necessary to meet the requirements of Aon's obligations to the Covered Entity. Aon shall determine what constitutes Minimum Necessary to accomplish the intended purpose of the use, disclosure or request.
- (e) **Substitution of Terms.** If any use or disclosure of PHI by Aon or the Client under the Consulting Services Agreement would be invalidated by the terms and provisions of this Agreement, the terms of the Consulting Services Agreement will be interpreted by substituting the Covered Entity for the Client (where appropriate) in order for such use or disclosure to be valid under this Agreement.
- (f) **Changes.** The Parties agree that any change to the Consulting Services that permits a use or disclosure of PHI on behalf of any Covered Entity shall be pursuant to that Covered Entity's Treatment, Payment or Health Care Operations, unless this Agreement is amended in writing.

6. Term and Termination.

- (a) **Term.** This Agreement shall be effective upon execution by the Parties and shall terminate upon termination of the Consulting Services Agreement, or upon ninety (90) days notice by either party. This Agreement shall terminate as to any given Covered Entity upon termination of that Covered Entity by Client.
- (b) **Termination for Cause.** Upon the Covered Entities' or Aon's knowledge of a material breach by the other party, the Covered Entities or Aon may either:
 - (i) Notify the breaching party of the breach and provide the breaching party sixty (60) days from the date of notice to cure the breach, and terminate this Agreement and the related portion of the Consulting Services if the breaching party does not cure the breach within that sixty (60) day period, unless otherwise extended by the non-breaching party; or
 - (ii) Immediately terminate this Agreement and the related portion of the Consulting Services if the breaching party has breached a material term of this Agreement and cure is not possible.
- (c) **Effect of Termination.** Upon termination of this Agreement or the Consulting Services Agreement for any reason, the Parties agree that the return or destruction of PHI is infeasible as Aon must retain that PHI which is necessary for Aon to continue its proper management and administration or to carry out its legal responsibilities. Aon shall continue to apply the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Aon maintains such PHI.

7. Miscellaneous.

- (a) **Regulatory References.** A reference in this Agreement to a section of the Code of Federal Regulations, the Privacy Rule, the Security Rule, or to another section of HIPAA means the section, as amended from time to time.
- (b) **Amendment.** The Parties agree to take such reasonable actions as are necessary to amend this Agreement from time to time as is necessary for the Covered Entities and Aon to comply with the requirements of HIPAA.
- (c) **Survival.** The respective rights and obligations of Aon under Section 6(c), this Section 7(c) and Section 7(d) of this Agreement shall survive the termination of this Agreement.
- (d) **Confidentiality.** The terms of this Agreement shall remain confidential except as described hereunder and in the Consulting Services Agreement, except that Aon may disclose the terms of this Agreement to entities that Aon reasonably believes are (i) part of an Organized Health Care Arrangement of which any of the Covered Entities are a part, or (ii) other Business Associates of the Covered Entity.
- (e) **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit the Covered Entities and Aon to comply with HIPAA, including any regulations

promulgated under the HITECH Act. In all other respects, the terms and conditions of the Consulting Services Agreement remain unchanged by this Agreement.

- (f) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one binding agreement.
- (g) **Agreement.** In all other respects, the terms and conditions of the Consulting Services Agreement remain unchanged by this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple originals effective on the date set forth above.

Aon Consulting, Inc.:

Signature: Bruce M. Cooper

Title: SVP

[Client], on behalf of each Covered Entity:

Signature: _____

Title: _____

[Client], as Client:

Signature: _____

Title: _____