



SELLING AGENT AGREEMENT

This Agreement dated as of _____ 2012 (“Effective Date”) made between Group Health Incorporated and HIP Insurance Company of New York, both EmblemHealth companies, having principal offices at 55 Water Street, New York, New York 10041 (“EmblemHealth”), and _____, having its principal office at, _____ (“Selling Agent”).

WHEREAS EmblemHealth is in the business of providing hospital and medical insurance benefits in multiple markets including the small group market consisting of employer groups of one (1) to fifty (50) employees, and seeks to expand its distribution and of modifying the way in which these Groups are solicited by utilizing the services of licensed Accident and Health Agents and Brokers licensed under section 2104 of New York Insurance Law; and

WHEREAS EmblemHealth has established a network of agents and brokers, programs and products and General Agents (“GA”); and

WHEREAS Selling Agent possesses a level of familiarity and expertise in the way in which group insurance products are marketed and sold through the use of licensed Accident and Health Agents and/or Brokers licensed under section 2104 of the New York Insurance Law; and

WHEREAS Selling Agent is willing, qualified and able to perform all of the duties required by EmblemHealth for participation in EmblemHealth’s network of brokers and agents (hereinafter “Network”); and

WHEREAS Selling Agent’s ability to enter into this Agreement and to fulfill the obligations required by this Agreement is in no way restricted by any other agreements;

NOW THEREFORE in consideration of these covenants, it is agreed as follows:

1. Applicable Markets and Products

This Agreement is applicable to the group types and product set forth in the attached **Exhibit A**. This Agreement is not applicable to the sale of any health insurance product subsidized, in whole or part, by local, state or federal government.

2. Scope of Authority

Selling Agent is hereby authorized to: (a) solicit applications for insurance coverage in accordance with all applicable EmblemHealth rules and underwriting guidelines which EmblemHealth may amend from time to time; (b) collect and remit initial premium to EmblemHealth; and (c) provide services to such insured groups or applicants during and after the application process. Selling Agent may not alter the

terms of any application or contract, and may not change or modify any rates for any insurance contracts or proposals. Selling Agent is permitted to present only those applications for insurance that meet EmblemHealth's requirements and underwriting guidelines. Selling Agent may not modify or change any of EmblemHealth's requirements and underwriting guidelines. Selling Agent shall have no authority with regard to EmblemHealth products or services other than that which is expressly granted by this Agreement, subsequent written agreements between EmblemHealth and Selling Agent, and/or any separate agreements between Selling Agent and General Agent provided that such authority has been approved and accepted by EmblemHealth. Without limiting the foregoing in any manner, unless specifically authorized in writing by an authorized Officer of EmblemHealth, Selling Agent may not, on behalf of EmblemHealth, incur any expense, alter any contract, discharge any obligation, bind in any way, reject or accept any application for insurance, prepare or render any premium notice, make any payment, waive any obligation due, commence or compromise any litigation, or pay, settle or reject any claim for benefits under any insurance contracts issued by EmblemHealth.

2-a. Indemnification

The Selling Agent agrees to indemnify, defend and hold harmless EmblemHealth and its directors, officers, employees, successors and assigns from and against any and all claims penalties, liabilities, losses, damages, suits, settlements, judgments, or costs, including reasonable attorney's fees, which may arise from the acts or omissions of the Selling Agent or its Selling Agents, brokers, officers, employees in performing under this Agreement.

3. Premium

Selling Agent may collect only the initial premium in connection with submission of an application for insurance coverage to EmblemHealth. All such premium shall be made payable to EmblemHealth and shall be immediately forwarded to EmblemHealth through its General Agent or, if there is no General Agent, then directly to EmblemHealth. Selling Agent may not commingle any premium collected on behalf of EmblemHealth with any other funds. Selling Agent may not collect any premium other than the initial premium paid with the application for insurance. Selling Agent may not extend the time for the payment of any premium due EmblemHealth.

4. Relationship to EmblemHealth

The Selling Agent, including its employees, is an independent contractor and shall not be deemed an employee of EmblemHealth. Selling Agent is responsible for payment of all withholding and similar taxes, and for the provision of all statutory benefits (such as, but not limited to Worker's Compensation) for Selling Agent and the Selling Agent's employees, if any. Neither Selling Agent nor its employees shall represent in any manner that they are employees of EmblemHealth.

5. Licensure and Insurance

At all times while this Agreement remains in effect, Selling Agent shall maintain all valid New York State Insurance Department licenses and registrations, as well as any other licenses, permits or registrations necessary for fulfilling its duties and obligations hereunder. Selling Agent shall immediately notify EmblemHealth in writing in the event that any such license, permit or registration is suspended or terminated, or if Selling Agent is the subject of any disciplinary action initiated by the Insurance Department of the State of New York or any other regulatory or governmental body or court.

Selling Agent shall also maintain at all times General Liability/Errors and Omissions insurance coverage in an amount not less than one million (1,000,000) dollars per occurrence. Upon request, Selling Agent shall provide EmblemHealth and/or its General Agent, as applicable, with a Certificate of Insurance evincing said coverage. Selling Agent shall immediately notify EmblemHealth and/or its General Agent, as applicable, in the event such liability insurance is terminated or modified.

6. Territory

Selling Agent is hereby authorized to solicit applications for insurance in accordance with this Agreement and EmblemHealth's rules and underwriting guidelines for providing insurance to eligible group. Selling Agent may not solicit applications for insurance from groups domiciled outside of the State of New York.

7. Compensation

As full compensation for services provided hereunder, Selling Agent shall receive commissions in accordance with EmblemHealth's commission schedules attached hereto as **Exhibit A** which may be revised by EmblemHealth from time to time. All commission compensation shall be due and payable after premium is received and credited by EmblemHealth. All commission compensation shall be calculated based upon premium received by EmblemHealth and in accordance with EmblemHealth's rules and protocols for crediting premium; said rules and protocols may be amended from time to time. Commission payments shall be made directly by EmblemHealth in accordance with usual cycles for paying such commissions. For commissions that become payable hereunder as a result of the sale of insurance where EmblemHealth was (a) not the prior insurance carrier, and (b) EmblemHealth had not paid Selling Agent commissions, then Selling Agent shall be vested in any commissions payable for the first twelve (12) consecutive months that the insurance program remains in force. Commencing on the thirteenth (13th) month, commissions payable hereunder shall continue to be paid provided that the Selling Agent continues to be recognized as the Selling Agent of Record.

For insurance sales where EmblemHealth is the current insurer and EmblemHealth is obligated to pay commissions to another Selling Agent, then no commissions will be payable hereunder to the succeeding Selling Agent until such time as EmblemHealth's obligations to the Selling Agent who originally solicited the insurance has expired. In addition, in order for a subsequent or succeeding Selling Agent to receive commission payments hereunder, the Selling Agent must first deliver to EmblemHealth a current, written Selling Agent of Record acknowledgment signed by the Policyholder. Said Agent of Record letter shall become effective ninety (90) days after it is received by EmblemHealth.

EmblemHealth shall only pay commissions provided that: (1) the Selling Agent is living or if a corporation, that the corporation remains an entity; (2) the Selling Agent continues to service the businesses pursuant to the terms of this Agreement; (3) the Selling Agent is actively and continuously engaged as a licensed agent or broker in the insurance business and services the active business written pursuant to this Agreement; and (4) the Selling Agent is not terminated as defined by this Agreement. If any premium is refunded by EmblemHealth, then Selling Agent shall be responsible for repaying the commission compensation applicable to the portion of premium refunded.

8. Grievance Procedures

Any controversy, complaint and/or grievance on the part of Selling Agent, as alleged against

EmblemHealth or the General Agent, shall be submitted to EmblemHealth for investigation and resolution pursuant to EmblemHealth's grievance procedures before being submitted to any agency or court. EmblemHealth shall set forth and amend its grievance procedures from time to time.

9. Assignment

This Agreement is for services specific to the Selling Agent, and may not be assigned or transferred by the Selling Agent without the written consent of EmblemHealth.

10. Advertising

Selling Agent shall comply with all EmblemHealth rules and procedures regarding all advertising, soliciting and sales materials. Only approved advertising and sales material may be utilized by Selling Agent. Selling Agent shall not permit or cause any person, firm or entity to use EmblemHealth's name, trade or service mark or logo without the express written permission of EmblemHealth's General Counsel. Selling Agent shall comply with all laws, rules and regulations that pertain to advertising and solicitation of the products or services covered hereunder.

11. Supplies

All material furnished to Selling Agent by EmblemHealth, including forms, applications, proposals and related advertising, and sales material are the property of EmblemHealth and, shall be used only in the manner intended and for the furtherance of EmblemHealth's business. Any materials in the Selling Agent's possession or control at the termination of this Agreement shall be promptly returned to either EmblemHealth or its General Agent as applicable.

12. Privacy, Security and HIPAA Requirements

Selling Agent shall maintain the privacy and security of all health and financial information pertaining to EmblemHealth members in accordance with applicable federal, state and local laws and regulations and in accordance with the terms and conditions of **Exhibit B** of this Agreement which are incorporated as if fully set forth herein. Selling Agent further acknowledges and agrees that it serves as a "business associate" of EmblemHealth pursuant to 45 C.F.R. Parts 160 and 164 (the "HIPAA Regulations") and that Selling Agent shall satisfy all terms and conditions set forth in **Exhibit B** of this Agreement.

13. Termination

This Agreement shall remain in effect for a term of one (1) year, unless terminated sooner in a manner and for a reason set forth below. The Agreement will automatically renew, subject to the same terms and conditions, unless a party hereto provides notice to the other parties of its desire not to renew. Said notice shall be served at least sixty (60) days prior to the expiration of the current term.

Notwithstanding the above, this Agreement shall terminate immediately in the event Selling Agent's license to conduct the business contemplated hereunder is suspended or terminated, or upon five (5) days written notice in the event (a) Selling Agent, or an Owner or Principal thereof, is convicted of any crime or misdemeanor involving moral turpitude or dishonesty; (b) Selling Agent, or an Owner or Principal thereof, is subject to disciplinary action by any regulatory or governmental body or court; (c) Selling Agent fails to achieve the sales, production or administrative requirements of EmblemHealth as shall be set forth and amended from time to time; (d) the material furnished by Selling Agent to EmblemHealth,

and relied upon by EmblemHealth in issuing this Agreement, contained any misstatement of fact; (e) Selling Agent induces or causes the cancellation of 10% or more of the Selling Agent's book of business in a year; (f) upon the death of the Selling Agent; or (g) such other grounds as may be set forth in a separate agreement between the Selling Agent and the General Agent as applicable, provided that said grounds for termination have been approved by EmblemHealth.

If EmblemHealth reasonably determines that Selling Agent has breached a material term of Appendix A of this Agreement, including, without limitation, any provision of Appendix A governing the use and disclosure of Protected Health Information, EmblemHealth may immediately terminate this Agreement. In the alternative, EmblemHealth at its option may provide Selling Agent with a written notice specifying the nature of the breach and allow Selling Agent the opportunity to cure the breach. If Selling Agent fails to cure such breach within thirty (30) days of EmblemHealth's written notice, EmblemHealth may immediately terminate this Agreement.

Upon termination of this Agreement, Selling Agent shall: a) if feasible, return or destroy all Protected Health Information as defined in Appendix A received from, or created or received by Selling Agent on behalf of, EmblemHealth that Selling Agent still maintains in any form, and Selling Agent shall retain no copies of such information; or b) if Selling Agent and EmblemHealth reasonably determine that such return or destruction is not feasible, extend the protections of Appendix A to such information and limit further uses and disclosures to those purposes that make the return or destruction of the Protected Health Information infeasible.

13-a. Reservation of Rights

EmblemHealth specifically reserves the following rights, subject to appropriate regulatory approval where applicable:

13-a.1 To discontinue or withdraw from sale any certificate, contract, marketing material, proposal or special marketing concept;

13-a.2 To modify, change, cancel or amend any certificate or contract;

13-a.3 To determine all terms, conditions and limitations on any certificate or contract;

13-a.4 To modify, change or amend the terms and condition under which any certificate or contract may be offered;

13-a.5 To modify, change, amend, delete or add any EmblemHealth procedure;

13-a.6 To require Agents to sign an acknowledgment of relationship or any other disclosure forms which EmblemHealth deems necessary;

13-a.7 Upon reasonable notice, to audit and make copies of any and all records in the Selling Agent's possession which relate to the Selling Agent's performance of its obligations under this Agreement.

13-a.8 To decline Selling Agent's request to appoint a sub or Selling Agent.

14. Miscellaneous

14.1 Compliance With Federal, State, And Local Laws

All parties will comply with all federal, state, municipal and local laws, rules and regulations that may be applicable to this Agreement.

14.2 No Waiver of Default

The failure of either party to exercise any right of termination hereunder shall not constitute a waiver of the rights granted herein with respect to any subsequent default.

14.3 Section Titles

Section titles as to the subject matter of particular sections herein are for convenience only and are in no way to be construed as part of this Agreement or as a limitation of the scope of the particular sections to which they refer.

14.4 Governing Law and Choice of Forum

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Any lawsuit arising from this Agreement shall be commenced in a court of the State of New York located in New York, Suffolk or Nassau county, or in a United States District Court of the Southern or Eastern District of New York.

14.5 Severability

If any of the provisions of this Agreement are held to be invalid or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

This Agreement supersedes all previous agreements between Selling Agent and EmblemHealth.

IN WITNESS WHEREOF the parties have set their hand, effective the date first shown above.

EmblemHealth Services Company LLC
Group Health Incorporated
HIP Insurance Company of New York

Selling Agent

By _____
sign name

By: _____
sign name

print name

print name

title

title

date

date

e-mail address

phone number

fax number

EXHIBIT A
Selling Agent Commission Schedule for New and Renewal Business

EXHIBIT B
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is made as of the Effective Date indicated on the first page above by and between, EmblemHealth Services Company LLC., on behalf of its licensed healthcare affiliates and their subsidiaries (which include but are not limited to, Group Health Incorporated with its place of business at 55 Water Street, New York, New York 10041, the licensed healthcare entities hereinafter referred to as "Covered Entity", and _____ with its principal place of business located at _____ hereinafter referred to as "Business Associate", (individually, a "Party" and collectively, the "Parties").

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as "the Administrative Simplification provisions," direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160, 162 and 164 (the "HIPAA Regulations"); and

WHEREAS, the Parties wish to enter into or have entered into an agreement and/or an arrangement (hereinafter collectively referred to as "Arrangement") whereby Business Associate will provide certain services to Covered Entity, and, pursuant to such Arrangement, Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Regulations.

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under the such Arrangement;

WHEREAS, the parties understand and agree that this amended business associate agreement is necessary in order for the Parties to continue the Arrangement following the effective date of the HIPAA Regulations, Health Information Technology for Economic and Clinical Health Act ("HITECH") and the American Recovery and Reinvestment Act of 2009 ("ARRA") and the rules and regulations promulgated thereunder and any amendments thereto;

THEREFORE, in consideration of the Parties' continuing obligations under the Arrangement, compliance with the HIPAA Regulations and amendments thereto, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the terms of this Agreement in order to address the requirements of the HIPAA Regulations and to protect the interests of both Parties and that this Agreement shall amend the Arrangement.

DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the HIPAA Regulations or in the Health Information Technology for Economic and Clinical Health Act ("HITECH"). In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Regulations, as amended, the HIPAA Regulations shall control. Where provisions of this Agreement are different than those

mandated in the HIPAA Regulations, but are nonetheless permitted by the HIPAA Regulations, the provisions of this Agreement shall control.

II. CONFIDENTIALITY REQUIREMENTS

(A) Business Associate agrees:

(i) to use or disclose Protected Health Information solely:

(1) as necessary to carry out Business Associate's responsibilities and duties under the Arrangement; and

(2) As required by Law;

(ii) at termination of this Agreement, the Arrangement or the business relationship of the Parties, or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate shall promptly return or destroy all Protected Health Information received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information, or if such return or destruction is not feasible, Business Associate shall extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible; and

(iii) To ensure that any and all its agents, including subcontractors, to whom it provides Protected Health Information received from or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate with respect to such information. In addition, Business Associate agrees to take reasonable steps to ensure that the actions and omissions of its employees', agents and subcontractors do not cause Business Associate to breach the terms of this Agreement.

(B) Notwithstanding the prohibitions set forth in this Agreement, Business Associate may use and disclose Protected Health Information as follows:

(i) as necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure:

1. the disclosure is required by Law; or

2. the Business Associate shall take reasonable steps to ensure that the person to whom the information is disclosed shall maintain the confidentiality of the information and shall use or further disclose it only as Required by Law or for the purpose for which it was disclosed to the person, and that the person promptly notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(C) Business Associate shall employ appropriate administrative, technical and physical safeguards, consistent with the size and complexity of Business Associate's operations, to prevent use or disclosure of Protected Health Information in any manner inconsistent with this Agreement. Business Associate shall maintain a written security program describing such safeguards, a copy of which shall be available to Covered Entity upon request. Business Associate shall also make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of

Covered Entity available to the United States Department of Health and Human Services in accordance with the HIPAA Regulations.

(D) Business Associate shall also comply with 45 C.F.R. Sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), and 164.316 (policies and procedures and documentation requirements) The additional requirements of HITECH that relate to privacy or security and that are made applicable with respect to covered entities shall also be applicable to Business Associate and shall be and by this reference hereby are incorporated into this Business Associate Agreement.

(E) Any and all information received directly or indirectly from Covered Entity in a portable medium or device, including but not limited to tapes, CDs, DVDs and any other format, shall be encrypted by Business Associate at all times utilizing best security practice technology. Such controls must be in accordance with security best practices, including but not limited to, physical and logical security controls, and shall apply to, among others, laptops, cell phones, tablets, personal digital assistants (PDA) and portable storage media devices.

(F) Business Associate shall promptly notify Covered Entity of any use or disclosure of Protected Health Information that is not compliance with the terms of this Agreement of which Business Associate becomes aware.

(G) Business Associate shall notify Covered Entity of any Breach of Unsecured Protected Health Information within ten (10) days of Business Associate's discovery of the Breach, unless Business Associate needs more time to investigate, in which case Business Associate shall have a total of, but in no event more than, thirty (30) days from Business Associate's discovery of the Breach to notify Covered Entity. Such notice shall provide, to the extent known at the time a Breach is discovered and ultimately thereafter the following:

1. brief description of what happened, including the date of the Breach and the date of discovery of the Breach, a description of the type of Unsecured Protected Health Information that was involved in the Breach, such as names, addresses, dates of birth, social security numbers, diagnoses or other clinical information ;
2. the total number of individuals and total number of individuals by state potentially impacted by the Breach and whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been accessed, acquired, used or disclosed during the Breach;
3. the name, address, date of birth, and identification number of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been accessed, acquired, used or disclosed during the Breach;
4. any steps individuals should take to protect themselves resulting from the Breach;
5. a description of the investigation into the Breach; mitigation of harm to individuals; and protection against further Breaches;
6. contact information of the individual from Business Associate's organization having the most knowledge of the Breach matter whom the Covered Entity can contact to discuss the facts surrounding the Breach; and.

7 any other available information as requested by Covered Entity in order to mitigate the effects of the Breach and to comply with state and federal privacy requirements.

8. In addition, 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.

(H) Unless specifically agreed to otherwise in writing between the Parties, Business Associate shall not use Protected Health Information for data aggregation services. For purposes of this Agreement, data aggregation services means the combining of Protected Health Information by Business Associate with the protected health information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

(I) Unless specifically agreed to otherwise in writing between the Parties, Business Associate shall not de-identify Protected Health Information or use de-identified Protected Health Information for any purpose.

(J) Business Associate shall use and disclosure only the minimum necessary Protected Health Information to the extent required by the HIPAA Regulations, HITECH and any guidance issued by the Secretary thereunder.

(K) Business Associate, in maintaining the privacy and security of Protected Health Information, shall employ practices and procedures which comply with the US Department of Health and Human Services "Guidance Specifying the Technologies and Methodologies That Render Protected Health Information Unusable, Unreadable or Indecipherable to Unauthorized Individuals for purposes of the Breach Notification Requirements under section 13402 of Title XIII " (HITECH) of ARRA, as may be amended, and by the regulations and guidance relating to security standards for PHI as may be promulgated from time to time.

III. AVAILABILITY OF PROTECTED HEALTH INFORMATION

(A) Within ten (10) days of a request by Covered Entity, Business Associate shall provide to Covered Entity all Protected Health Information in Business Associate's possession necessary for Covered Entity to provide individuals or their representatives with access to or copies thereof in accordance with 45 C.F.R. Section 164.524 and HITECH.

(B) Within ten (10) days of a request by Covered Entity, Business Associate shall provide to Covered Entity all Protected Health Information in Business Associate's possession necessary for Covered Entity to respond to a request by an individual to amend such Protected Health Information in accordance with 45 C.F.R. Section 164.526. At Covered Entity's direction, Business Associate shall incorporate any amendments to an individual's Protected Health Information made by Covered Entity into the copies of such information maintained by Business Associate.

(C) Within ten (10) days of a request by Covered Entity, Business Associate shall provide to Covered Entity all information and records in Business Associate's possession necessary for Covered Entity to provide individuals or their representatives with an accounting of disclosures thereof in accordance with 45 C.F.R. Section 164.528 and HITECH. On a monthly basis (in a format to be supplied by Covered Entity), Business Associate shall provide Covered Entity with an accounting of disclosures which Covered Entity shall provide to Individual's upon their request.

(D) In the event Business Associate is not able to provide Covered Entity with the requested

Information within the required timeframe, Business Associate shall notify Covered Entity as soon as it becomes aware of such delay so that Covered Entity may notify the Individual of the need for an extension.

IV. SECURITY STANDARDS

(A) Business Associate agrees to:

1) Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity;

(2) Ensure that any agent, including a subcontractor, to whom it provides electronic Protected Health Information, agrees to implement reasonable and appropriate safeguards to protect such electronic Protected Health Information;

(3) Promptly report to Covered Entity any security incident involving electronic Protected Health Information of which it becomes aware; and

(4) Comply with any other requirements that the Secretary of Health and Human Services may require from time to time with respect to electronic Protected Health Information by the issuance of additional guidance or regulations pursuant to HIPAA.

(B) Business Associate shall satisfy all applicable provisions of the HIPAA standards for electronic transactions and code sets, also known as the Electronic Data Interchange (EDI) Standards, codified at 45 C.F.R. Part 162. Business Associate further agrees to ensure that any agent, including a subcontractor, that conducts standard transactions, as such term is defined at 45 C.F.R. § 162.103, on its behalf will comply with the EDI standards.

(C) Business Associate also represents that it has and shall maintain throughout the term of this Agreement policies and procedures designed to detect, prevent, and mitigate the risk of identity theft to comply with the provisions, as applicable, of the Federal Trade Commission's Identity Theft Prevention Red Flags Rule (16 C.F.R. § 681.2).

V. TERMINATION

Notwithstanding anything in this Agreement to the contrary, Covered Entity shall have the right to immediately terminate this Agreement and the Arrangement if Covered Entity reasonably determines that Business Associate has violated any material term of this Agreement. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, Covered Entity gives written notice to Business Associate of such belief within a reasonable time after forming such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to immediately terminate this Agreement and the Arrangement. If the termination of the Agreement is not feasible, EMBLEMHEALTH shall report the circumstances of the material breach to the Secretary.

VI. NOTICE

(A) Any notice or report given or required to be given to the Covered Entity pursuant to this Agreement by the Business Associate shall be given orally and in writing via regular mail to the telephone number and address set forth below. In the event that the oral notice is received by Covered Entity through an automated recording device, the oral notice must include the name and telephone number of the appropriate contact person of the Business Associate and the reason for the call.

Oral Notice to Covered Entity: 646-447-6276.
Written Notice to Covered Entity: Corporate Compliance Department
PO Box 2878,
New York, NY 10116-2878

(B) Any notice given or required to be given to the Business Associate pursuant to this Agreement by the Covered Entity shall be in writing and shall be deemed to have been given when personally delivered, sent by facsimile transmission, or four days after the date when deposited in the United States mail and sent postage prepaid by registered or certified mail, return receipt requested, or private courier. Such notice shall be directed to the Business Associate at its address or facsimile number as it appears in the Covered Entity's records.

VII. MISCELLANEOUS

(A) Except as expressly stated herein or the HIPAA Regulations, the parties to this Agreement do not intend to create any rights in any third parties. The obligations of Business Associate under this Section shall survive the expiration, termination, or cancellation of this Agreement, the Arrangement and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

(B) Except as specifically provided otherwise, this Agreement may be amended or modified only in a writing signed by the Parties. This Agreement shall not be assigned in whole or in part by any party without the prior written consent of the other parties which consent shall not be unreasonably withheld or delayed, except that any party may assign this Agreement, without the need to obtain prior written consent of the other parties, to an entity which shall acquire or succeed, by acquisition, merger or otherwise, the party's business or assets or otherwise becomes a successor in interest. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the State of New York. Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.

(C) Business Associate agrees to indemnify, defend and hold harmless Covered Entity and its directors, officers, employees, agents and subsidiaries, from and against any costs, claims, demand, lawsuits, actions, causes of action, liabilities, penalties, losses and expenses (including reasonable

counsel fees and breach notification expenses) arising from any violation of HITECH or ARRA and/or other applicable law, and/or any breach of unsecured protected health information and/or breach of personal information, by or caused by Business Associate and/or its employees, agents, representatives, subcontractors and/or independent contractors.

(D) The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of Protected Health Information. However, the parties agree that, in the event that any documentation of the Arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The Business Associate also agrees that it will comply with applicable state and federal laws regarding the use and disclosure of Protected Health Information to the extent that such laws are not pre-empted by the HIPAA Regulations when using or disclosing Protected Health Information pursuant to this Agreement.

(E) In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. The provisions of this Agreement supersede any provisions of the Arrangement agreement that may contradict or be in conflict with the provisions of this Agreement. In addition, in the event that the Covered Entity believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Regulations, the Covered Entity shall have the right to amend the terms of this Agreement as necessary or appropriate to bring it into compliance.

(F) This Amendment, including the documents or instruments referred to herein, supersedes all prior or contemporaneous negotiations or agreements, whether oral or written, relating to the subject matter hereof.