

## Business Associate Contract

THIS BUSINESS ASSOCIATE CONTRACT (“Contract”) is by and between  
**AGC Health Benefit Trust Oregon Columbia Chapter** (“Covered Entity”) and  
**Benefit Solutions, Inc.** (“Business Associate”).

The parties are entering into this Contract to allow Covered Entity to comply with the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (collectively, “HIPAA”). In consideration of this Contract between the parties, the parties’ ongoing relationship, and Covered Entity’s compliance with HIPAA, the parties agree as follows:

1. Definitions.

- 1.1 Breach. “Breach” means, generally, the unauthorized acquisition, access, uses or disclosure of unsecured protected health information that compromises the security or privacy of such information.
- 1.2 Individual. “Individual” shall have the same meaning as the term “individual” in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502.
- 1.3 Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 1.4 Required By Law. “Required by law” shall have the same meaning as the term “required by law” in 45 CFR 164.103.
- 1.5 Unsecured Protected Health Information (“PHI”). “Unsecured PHI” means any PHI that is not secured through the use of technology or methodology specified by the United States Department of Health and Human Services, e.g., encryption or destruction.

2. Permitted Uses and Disclosures. Business Associate may:

- 2.1 Use and disclose “protected health information” (PHI), as that term is defined in HIPAA, from or created on behalf of Covered Entity for the purpose of fulfilling its obligations under the Administrative Services Agreement between the Covered Entity and the Business Associate (hereafter the “Agreement”).
- 2.2 Use and disclose PHI for the proper management and administration of Business Associate and to carry out Business Associate’s legal responsibilities, as long as, in the case of any such disclosure, either: (i) the disclosure is required by law; or (ii) Business Associate obtains reasonable assurances from the person to whom Business Associate discloses the PHI that the PHI will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to such person and that the person will notify Business Associate of any instances of which the person is aware in which the confidentiality of the PHI has been breached.
- 2.3 Use PHI to provide data aggregation services if provided under the Agreement.

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- 2.4 Use and disclose PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1), which generally permits disclosures by whistleblowers and workforce member crime victims.
3. Business Associate Obligations. To the extent that Business Associate has or maintains any PHI of Covered Entity, Business Associate will:
    - 3.1 Not use or further disclose PHI except as permitted or required by this Contract or the Agreement or as required by law.
    - 3.2 Use appropriate safeguards to prevent use or disclosure of PHI other than as permitted or required by this Contract and the Agreement.
    - 3.3 Report to Covered Entity any use or disclosure of PHI not provided for by this Contract or the Agreement of which Business Associate becomes aware.
    - 3.4 Ensure that Business Associate's agents, including any subcontractor, to whom Business Associate provides Covered Entity's PHI agrees to the restrictions and conditions that apply to Business Associate with respect to such PHI.
    - 3.5 Make available PHI to Covered Entity so Covered Entity can meet Covered Entity's obligations to provide individuals' access to such PHI under HIPAA, as Covered Entity may instruct.
    - 3.6 Make available PHI to Covered Entity so Covered Entity can meet Covered Entity's obligations to amend incomplete or inaccurate PHI under HIPAA and incorporate any amendments as Covered Entity may instruct.
    - 3.7 Maintain and provide to Covered Entity information about disclosures of PHI by Business Associate that are subject to the HIPAA accounting of disclosure requirements so Covered Entity can meet Covered Entity's obligations to provide individuals with an accounting of disclosures.
    - 3.8 Develop and implement policies and procedures to assure compliance with applicable provisions of HIPAA and any applicable regulations. The policies and procedures will be designed to further safeguard and preserve the integrity, confidentiality and availability of PHI, and prevent unauthorized acquisition, access, use or disclosure of PHI.
    - 3.9 Make Business Associate's internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of the United States Department of Health and Human Services for purposes of determining Covered Entity's compliance with Covered Entity's legal obligations under HIPAA.
    - 3.10 Mitigate, to the extent practicable, any harmful effect known to Business Associate of a breach of unsecured PHI by Business Associate.
    - 3.11 Notify Covered Entity of any breach of unsecured PHI as described in the HITECH Act without unreasonable delay and in no event later than 60 calendar days from the discovery of such breach by the Business Associate. Business Associate should provide written notice to the Covered Entity, which will:

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- a. Identify (if known) each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed during such breach;
- b. Identify the nature of the non-permitted access, use, or disclosure including the date of the incident and the date of discovery;
- c. Identify the PHI accessed, used, or disclosed (e.g., name, social security number, date of birth);
- d. Identify who made the non-permitted access, use or received the non-permitted disclosure;
- e. Identify what corrective action Business Associate took or will take to prevent further non-permitted accesses, uses or disclosures;
- f. Identify what Business Associate did or will do to mitigate any harmful effect of the non-permitted access, use or disclosure; and
- g. Provide other information, which is reasonably requested by the Covered Entity.

4. Covered Entity Obligations. Covered Entity will:

- 4.1 Not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA.
- 4.2 Be responsible for using appropriate safeguards to maintain the privacy, security, and confidentiality of PHI transmitted or otherwise provided to Business Associate.
- 4.3 Notify Business Associate of: (i) any limitation(s) in its notice of privacy practices to the extent that such limitation may affect Business Associate's use or disclosure of PHI; (ii) any changes in, or revocation of, permission by an individual to use or disclose PHI to the extent as may affect Business Associate's use or disclosure of PHI; and/or (iii) any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with HIPAA to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

5. Termination. Upon Covered Entity's knowledge of a material breach of this Contract by Business Associate, Covered Entity may terminate this Contract and the Agreement if Business Associate fails to cure the breach or end the violation within 60 days after receiving written notice from Covered Entity.

6. Results of Termination. The parties agree that it will not be feasible for Business Associate to return or destroy all PHI that Business Associate maintains. Therefore, Business Associate shall extend the protections of this Contract to such PHI and limit further use and disclosure of the PHI to those purposes that make the return or destruction of the PHI infeasible. This section shall survive the termination of this Contract.

7. Amendment. The parties agree to take such action as is necessary to amend this Contract from time to time so Covered Entity can comply with the requirements of HIPAA.

8. Interpretation. Any ambiguity in this Contract shall be resolved to permit Covered Entity to comply with HIPAA.

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9. No Third Party Beneficiary. Nothing in this Contract is intended to confer or shall confer upon any person other than Covered Entity, Business Associate, and their respective successors and assigns any rights, remedies, obligations, or liabilities whatsoever.

10. Effects on Agreement. Except as specifically required to implement this Contract, all other provisions of the Agreement shall remain in full force and effect. In the event of any inconsistency between the Agreement and this Contract, this Contract shall control.

The parties enter into this Contract, effective the 1st day of January, 2010.

AGC Health Benefit Trust Oregon Columbia Chapter

Benefit Solutions, Inc.

By: John Small Chair  
(Trustee) 1-8-11

By: Joni Bryden 12-21-10  
Title: Compliance Director (Date)

By: \_\_\_\_\_  
(Trustee)