

## EXHIBIT B

### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “Agreement”) is made as of 10/01/2019, by and between the group health benefits under the **AGC HEALTH BENEFIT TRUST (“CLIENT”)** and **JD FULWILER & CO., INSURANCE (“FULWILER”)**.

#### **RECITALS:**

A. CLIENT and FULWILER have entered into an arrangement or arrangements pursuant to which FULWILER provides certain services for and on behalf of CLIENT (the “Arrangement”) and under which FULWILER will have access to, create and/or receive Protected Health Information of CLIENT.

B. Under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended, and its implementing regulations which include the Standards for the Privacy of Individually Identifiable Health Information (the “Privacy Rule”) (45 C.F.R. Parts 160 and 164) and the Security Standards for the Protection of Electronic Protected Health Information (the “Security Rule”) (45 C.F.R. Parts 160 and 164), as amended by applicable provisions of the Health Information Technology for Economic and Clinical Health Act (Title XIII, Subtitle D) and its implementing regulations (the “HITECH Act”) (collectively, the “HIPAA Rules”), CLIENT and FULWILER must enter into a business associate agreement to enable FULWILER to carry out its obligations under the Arrangement since CLIENT discloses to FULWILER, and/or FULWILER creates and receives on behalf of CLIENT Individually Identifiable Health Information, as such term is defined in 45 C.F.R. 160.103; and

C. CLIENT and FULWILER desire to make this Agreement to the Arrangement in order comply with applicable requirements under the HIPAA Rules.

**NOW, THEREFORE,** for and in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

#### **I. DEFINITIONS.**

Capitalized terms used in this Agreement and not otherwise defined herein shall have that meaning given to them in HIPAA Rules.

#### **II. USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION BY FULWILER.**

2.1 Confidentiality. FULWILER shall hold Protected Health Information confidentially, and shall not Use or Disclose it other than as permitted or required by this Agreement or as Required by Law. FULWILER shall not use or disclose any Protected Health Information received from or on behalf of CLIENT, except as permitted or required by this Agreement, or as required by law (HIPAA and its regulations) or as otherwise authorized in writing by the CLIENT.

2.2 Use or Disclosure to Provide Services Under the Arrangement. FULWILER may Use and Disclose Protected Health Information only to the extent necessary to perform its obligations under the Arrangement; provided, however, that FULWILER shall not, and shall ensure that its directors, officers, employees, contractors, Subcontractors and Agents (the “Representatives”) do not, Use or Disclose Protected Health Information in any manner that would violate the HIPAA Rules, as amended from time to time, if done by CLIENT.

2.3 Use or disclosure for FULWILER’S Management and Administration. Notwithstanding Section 2.2 above, FULWILER may Use or Disclose Protected Health Information for its proper management and administration or to carry out FULWEILER’s legal responsibilities, provided that, before Disclosing Protected Health Information to a third party for FULWILER’s proper management and administration, FULWILER must obtain reasonable assurances from the third party that: (i) the Protected Health Information will be held confidentially and subject to the same restrictions and conditions that apply to FULWILER under this Agreement and will only be Used or Disclosed as Required by Law or for the purposes for which it was Disclosed to the third party; and (ii) the third party will immediately notify FULWILER (who will in turn notify CLIENT in accordance with the breach notification provisions in Section 3.2 of this Agreement) of any instances of which the person or entity becomes aware that a

Breach or potential Breach has occurred with respect to CLIENT's Protected Health Information.

2.4 Use or disclosure to Provide Data Aggregation Services. FULWILER may use or Disclose Protected Health Information to provide Data Aggregation services relating to the Health Care Operations of CLIENT.

2.5 De-Identification of Protected Health Information. FULWILER may de-identify any and all Protected Health Information provided that the de-identification conforms to the requirements of the HIPAA Rules. The parties acknowledge and agree that de-identified data does not constitute Protected Health Information and is not subject to the terms of this Agreement.

2.6 Use and Disclosure of Limited Data Sets. FULWILER may Use Protected Health Information to create Limited Data Sets and Use or Disclose such Limited Data Sets for only research, public health or Health Care Operations purposes and will otherwise use, disclose or request only the minimum necessary amount of Protected Health Information to accomplish the intended purpose. Except as set forth in this Section, the conditions and restrictions contained herein on FULWILER's Use and Disclosure of Protected Health Information apply to FULWILER's Use and Disclosure of Protected Health Information contained in such Limited Data Sets. Further, FULWILER agrees that it shall not identify the information contained in such Limited Data Sets or contact the Individuals who are the subject of the Protected Health Information contained in such Limited Data Sets, except as otherwise permitted or required by this Agreement.

2.7 Minimum Necessary Determination for Use and Disclosure. FULWILER represents that it will request no more Protected Health Information than is necessary to perform obligations to CLIENT. FULWILER shall use its professional judgment to determine the minimum amount and type of Protected Health Information necessary to perform its obligations under the Agreement in compliance with the minimum necessary standards under 45 CFR §§ 160 and 164. Likewise, CLIENT represents that it will not provide FULWILER with any more Protected Health Information than FULWILER has requested or than is otherwise necessary to perform the intended purpose in accordance with the minimum necessary standards under 45 CFR §§ 160 and 164. Neither CLIENT nor FULWILER will be obligated to comply

with this minimum-necessary limitation if not required to limit its use, disclosure or request to the minimum necessary standard.

### III. RESPONSIBILITIES OF FULWILER.

3.1 Safeguards Against Misuse of Information. FULWILER agrees that it will implement appropriate safeguards to prevent the Use or Disclosure of Protected Health Information other than pursuant to the terms and conditions of this Agreement.

3.2 Reporting Disclosures of Protected Health Information. FULWILER shall, without unreasonable delay and in no case later than fifteen (15) business days of becoming aware of a Disclosure of Protected Health Information in violation of this Agreement by FULWILER or its Representatives, report such Disclosure to CLIENT. FULWILER agrees to have procedures in place for mitigating, to the extent practicable, any harmful effect known to FULWILER and arising from such Use or Disclosure.

3.3 Agreements by Third Parties. FULWILER shall enter into an agreement with any agent or Subcontractor that will have access to Protected Health Information pursuant to which such Agent or Subcontractor agrees to be bound by the same or substantially similar obligations, restrictions, terms, and conditions of this Agreement that apply to FULWILER with respect to such Protected Health Information. By executing this Agreement, FULWILER acknowledges it will investigate actions or inactions by its Subcontractor or Agent that may constitute violations of the HIPAA Rules, and that pertain to the Services, and will notify CLIENT of violations as required by Law and this Agreement.

3.4 Access to Information. FULWILER shall provide access, at the request of CLIENT or an Individual, to Protected Health Information maintained by FULWILER in a Designated Record Set(s), to CLIENT, or as directed by CLIENT, to an Individual in order to meet the requirements of 45 C.F.R. § 164.524. FULWILER shall use commercially reasonable efforts to provide such access within fifteen (15) business days of receiving such request.

3.5 Availability of Protected Health Information for Amendment. FULWILER shall make any amendment to Protected Health Information maintained in a Designated Record Set by FULWILER that is requested by CLIENT, or as directed by CLIENT pursuant to Title 45 (Part 164) § specifically § 164.526

of the CFR, or to respond to any request by an Individual. FULWILER shall use its best efforts to make such amendments within twenty (20) business days of receiving such request.

3.6 Accounting of Disclosures. FULWILER shall document such Disclosures of Protected Health Information related to such Disclosures as would be required for CLIENT to respond to a request by an Individual for an accounting of Disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

FULWILER shall provide to CLIENT or, as directed by CLIENT, to an Individual, information collected in accordance with the preceding paragraph to permit CLIENT to respond to a request by an Individual for an accounting of Disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. FULWILER shall use commercially reasonable efforts to provide such information within twenty (20) days of receiving such written request.

3.7 Uses and Disclosures Required by Law. Except to the extent prohibited by law, FULWILER shall immediately notify CLIENT upon its receipt of a request for Use or Disclosure of Protected Health Information with which FULWILER believes it is Required by Law to comply. FULWILER shall provide CLIENT with a copy of such request, shall consult and cooperate with CLIENT concerning the proper response to such request and shall provide CLIENT with a copy of any information Disclosed pursuant to such request.

3.8 Availability of Book and Records. FULWILER hereby agrees to make its internal practices, books, and records relating to the Use and Disclosure of Protected Health Information available to the Secretary of Health and Human Services (the "Secretary") for purposes of determining CLIENT's compliance with the HIPAA Rules. Notwithstanding the foregoing, nothing herein shall be deemed to require FULWILER to waive any attorney-client, accountant-client, or other legal privilege.

3.9 Security Obligations for Electronic Protected Health Information. FULWILER shall, in accordance with the Security Rule, develop, implement, maintain and use Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information it creates, receives, maintains, or transmits on behalf of

CLIENT. By executing this Agreement, FULWILER affirms these safeguards are in place. Further, FULWILER shall ensure that any Representative or other party to whom FULWILER provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect such Electronic Protected Health Information. 3.10 Privacy or Security Breach, Reporting and Associated Costs

FULWILER, following the Discovery of a Breach of Unsecured Protected Health Information of the CLIENT, shall notify CLIENT of such Breach. FULWILER shall provide such notice without unreasonable delay, and in no case later than ten (10) business days after Discovery of the Breach of Unsecured Protected Health Information by FULWILER or Discovery of the Breach of Unsecured Protected Health Information by a Subcontractor or Agent of FULWILER.

3.11 Breach Notification. Notice to CLIENT required by Section 3.10 above shall include: (i) to the extent possible, the names of the Individual(s) whose Unsecured Protected Health Information has been, or is reasonably believed by FULWILER to have been, accessed, acquired, used, or disclosed during the Breach; (ii) a brief description of what happened, including the date of the Breach and the date of the Discovery of the Breach, if known; (iii) a description of the types of Unsecured Protected Health Information that were involved in the Breach; (iv) a brief description of what FULWILER is doing or will be doing to investigate the Breach, to mitigate harm to the Individual(s), and to protect against further Breaches; and (v) any other information that the CLIENT determines it needs to include in notifications to the Individual(s) under 45 CFR §164.404(c).

After receipt of notice, from any source, of a Breach involving Unsecured Protected Health Information used, disclosed, maintained, or otherwise possessed by FULWILER or its Representative, the CLIENT, exercising reasonable discretion, may (i) require FULWILER, at FULWILER's sole expense, to use a mutually agreed upon written notice to notify, on the CLIENT's behalf, the Individual(s) affected by the Breach, in accordance with the notification requirements set forth in 45 CFR §164.404, without unreasonable delay, but in no case later than sixty (60) days after Discovery of the Breach; or (ii) elect to provide notice to the Individual(s) affected by the Breach. FULWILER shall pay all costs (including mailing, labor, administrative costs, vendor charges,

and any other reasonable costs), losses, penalties, fines, and liabilities arising from or associated with the Breach, including without limitation, the costs of FULWILER's or CLIENT's actions taken to: (i) notify the affected Individual(s) of, and to respond to, the Breach; (ii) mitigate harm to the affected Individual(s); (iii) respond to questions or requests for information about the Breach; and (iv) pay fines, damages or penalties assessed against CLIENT, the plan sponsor, or FULWILER on account of the Breach of Unsecured PHI.

3.12 Security Incidents. FULWILER will report to CLIENT any use or disclosure of CLIENT's Protected Health Information not provided for by this Agreement or the Arrangement of which it becomes aware in accordance with 45 CFR §164.504(e)(2)(ii)(C); and/or any Security Incident of which it becomes aware in accordance with 45 CFR §164.314(a)(2)(i)(C). Notwithstanding the foregoing, pings, port scans, and similar routine attempts on FULWILER's firewall that are successfully blocked shall not require reporting due to the infeasibility of recording and reporting all such pings, port scans, and other routine events. If any such Security Incident results in a disclosure not permitted by this Agreement, including a Breach or potential Breach of CLIENT's Unsecured Protected Health Information, FULWILER will make a report in accordance with the provisions set forth in Sections 3.10 and 3.11 above.

3.13 Agreed to Restrictions. FULWILER shall abide by any restrictions, of which FULWILER is aware, relating to the Disclosure of Protected Health Information which CLIENT has agreed upon pursuant to the HIPAA Rules. FULWILER agrees to mitigate, to the extent practicable, any harmful effect that is known to FULWILER of any use or disclosure of the Protected Health Information.

#### **IV. RESPONSIBILITIES OF CLIENT.**

4.1 Requests for Uses or Disclosures. CLIENT shall not request FULWILER to Use or Disclose Protected Health Information in any manner that would violate this Agreement or the HIPAA Rules.

4.2 Notice of Limitations. CLIENT hereby agrees to notify FULWILER of any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. § 164.520 (or any successor provision of the Privacy Rule), to the extent that such limitation may affect FULWILER's use or disclosure of Protected Health Information under this Agreement.

4.3 Notice of Permissions. CLIENT hereby agrees to notify FULWILER of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent such changes may affect FULWILER's use or disclosure of Protected Health Information under this Agreement.

4.4 Other Arrangements. CLIENT hereby agrees to promptly notify FULWILER, in writing and in a timely manner, of any arrangements permitted or required of CLIENT under the Privacy Rule that may impact in any manner the Use or Disclosure of Protected Health Information by FULWILER under this Agreement or the Arrangement, including without limitation restrictions on the Use or Disclosure of Protected Health Information agreed to by CLIENT as provided for in 45 C.R.F § 164.522 as amended by the HITECH Act.

4.5 Compliance with HIPAA. To the extent required and at such time as required under applicable law, CLIENT and FULWILER each agree by signing this Agreement, to comply with the HIPAA Rules.

#### **V. TERMINATION.**

5.1 Term. This Agreement shall become effective on the date on which the CLIENT and FULWILER entered into the Arrangement and, unless otherwise terminated as provided herein, shall terminate when all Protected Health Information provided by CLIENT to FULWILER, or created or received by FULWILER or its Representatives on behalf of CLIENT, is destroyed or returned to CLIENT. If it is impractical or impossible to return or destroy Protected Health Information, the provisions and protections described in this Agreement with respect to Protected Health Information shall remain in effect for so long as such information remains in the possession of FULWILER or its Representatives.

5.2 Termination by Either Party. The Arrangement may be terminated by either party, subject to the delivery of the written notice and the expiration of the cure period provided in the Arrangement, in the event that a party breaches any material term of this Agreement. In the event that a party is entitled to terminate the Arrangement pursuant to this Section 5.2 but determines that termination is not feasible, the non-breaching party acknowledges that the breaching party shall have the right to report the breach to the Secretary.

**5.3 Return or Destruction of Protected Health Information Upon Termination.** Upon termination of the Arrangement, FULWILER shall either return or destroy all Protected Health Information and Electronic Protected Health Information which FULWILER still maintains in any form and shall notify CLIENT if it is impractical or impossible to return or destroy Protected Health Information. This provision shall also apply to all Protected Health Information that is in the possession of Subcontractors or Agents of FULWILER. FULWILER shall not retain any copies of such Protected Health Information or Electronic Protected Health Information. Notwithstanding the foregoing, to the extent that it is not feasible to return or destroy such Protected Health Information and Electronic Protected Health Information FULWILER shall also provide to CLIENT notification of conditions that make the return or destruction not feasible. For any such information, the terms and provisions of this Agreement shall survive the termination of the Arrangement with respect to such Protected Health Information and Electronic Protected Health Information, and FULWILER shall extend the same protection as set forth in the Agreement to such Protected Health Information and Electronic Protected Health Information and shall limit further use and disclosure solely for such purpose or purposes which prevented its return or destruction. FULWILER agrees to indemnify, hold harmless, and defend the CLIENT from and against any and all costs, losses, penalties, fines, and liabilities directly resulting from FULWILER's failure to comply with the obligations contained in this Section 5.3.

## **VI. MODIFICATIONS TO COMPLY WITH STANDARDS.**

In the event that additional standards are promulgated under the HIPAA Rules, or any existing standards are amended, the parties agree to enter into a mutually acceptable amendment to this Agreement to enable CLIENT to satisfy its obligations under such additional or amended standard(s). Upon the effective date of any such amendment of standards being formulated, FULWILER shall take any and all actions under this Agreement to remain in compliance with such new regulations.

## **VII. MISCELLANEOUS.**

7.1 The parties agree and acknowledge that, as between CLIENT and FULWILER, CLIENT is the

owner of the Protected Health Information and Electronic Protected Health Information.

7.2 In the event that a provision of this Agreement conflicts with a provision of the Arrangement, the provision of the Agreement shall control. Otherwise, this Agreement shall be construed under, and in accordance with, the terms of the Arrangement.

7.3 This Agreement may be amended only by written agreement between the parties. This Agreement shall be interpreted by and construed in accordance with the laws of the State of Oregon. The headings of each section in this Agreement are for reference only and shall not affect the meaning of this Agreement.

7.4 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 and assigns of the parties any rights, remedies, obligations, or liabilities whatsoever.

7.5 Any ambiguity in this Agreement shall be resolved to permit the applicable party to comply with the HIPAA Rules. In the event a party determines in good faith that any such regulation or guidance adopted or amended after the execution of this Agreement shall cause any paragraph or provision of this Agreement to be invalid, void or in any manner unlawful or subject either party to penalty, then the parties agree to modify and amend this Agreement in a manner that would eliminate any such risk.

7.6 **Subpoenas, Court Orders, and Governmental Requests.** If FULWILER receives a court order, subpoena, or governmental request for documents or other information containing CLIENT's Protected Health Information, FULWILER will use its best efforts to notify CLIENT of the receipt of the request within two (2) business days and provide CLIENT an opportunity to respond. Business Associate may comply with such an order, subpoena, or request as permitted by law.

7.7 **Right to Injunction or Other Equitable Relief.** FULWILER agrees that the breach or threatened breach of this Agreement may cause irreparable harm to CLIENT, that CLIENT may not have an adequate remedy at law, and that CLIENT shall therefore be entitled to seek injunctive or other equitable relief to enforce this Agreement without obligation to post a bond.

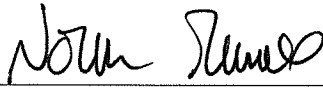
7.8 Relationship of Parties. The relationship between the CLIENT and FULWILER will solely be that of independent contractors engaged in the operation of their own respective businesses. FULWILER is not an Agent of CLIENT. Representatives are not Agents of the CLIENT.

7.9 Assignment. This Agreement shall not be assigned or otherwise transferred by a party without the prior written consent of the other parties, which consent shall not be unreasonably withheld.

7.10 Severability and Waiver. The invalidity of any term or provision of this Agreement will not affect the validity of any other provision. Waiver by any party of strict performance of any provision of this Agreement will not be a waiver of or prejudice any party's right to require strict performance of the same provision in the future or of any other provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

**AGC HEALTH BENEFIT TRUST**

By: 

Title: CHAIR

**JD FULWILER & CO., INSURANCE**

By: 

Name: Trisha Fulwiler, President