

**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT
BETWEEN FAIRVIEW INSURANCE AGENCY ASSOCIATES
AND _____**

This Non-Disclosure Agreement (the “Agreement”) is effective as of the date last below signed by and between FOUNDATION RISK PARTNERS D/B/A/ FAIRVIEW INSURANCE AGENCY ASSOCIATES (“Fairview”), and _____ (“Proposer”). Fairview and the Proposer may be referred to herein individually as “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Fairview serves as a consultant to the New Jersey Turnpike Authority (the “Authority”) in connection with the Authority’s procurement of self-funded health benefits program services, pursuant to the “Request for Proposals for Self-Funded Health Benefits Program Services” issued by the Authority on April 15, 2021 (the “RFP”); and

WHEREAS, Proposer intends to submit a proposal in response to the RFP; and

WHEREAS, in connection with the RFP, the Parties may be sharing records and information that may include proprietary, trade secret or confidential business records, and which may be deemed confidential or otherwise protected from disclosure by various federal and State laws (collectively, the “Confidential Information”); and

WHEREAS, the Parties desire to ensure the prevention of any unauthorized disclosure of Confidential Information that may be shared among the Parties in connection with the RFP; and

WHEREAS, the Parties are willing to share such Confidential Information, as more specifically defined hereinbelow, subject to the terms and conditions of this Agreement,

NOW, THEREFORE, in consideration of the promises and mutual covenants, conditions and limitations contained herein, the Parties do hereby agree as follows:

1. **PURPOSE**

The Parties acknowledge, understand, and agree that any “Confidential Information,” as defined hereinbelow, that either Party receives pursuant to this Agreement, is to be solely and exclusively used in connection with the procurement by the Authority for the Self-Funded Health Benefits Program Services for which it issued the RFP.

The Parties agree that, prior to sharing any Confidential Information pursuant to this Agreement, they shall make reasonable efforts to ensure that such Confidential Information is accurate, complete, timely and relevant. Each Party acknowledges

to the other that, other than the duties, liabilities and obligations set forth herein, the receipt and review of Confidential Information from one Party to the other pursuant to this Agreement will not create or impose additional obligations on the Parties.

2. TERMS DEFINED

A. "Confidential Information" means all information and records, in any medium, disclosed directly or indirectly through any means of communication (including oral, written or digital form) or observation, by or on behalf of the Disclosing Party to or for the benefit of the Receiving Party, and all information or records derived therefrom, that relate to the Disclosing Party's information and records deemed confidential or prohibited from disclosure by federal or State law, or that constitute trade secrets or proprietary or confidential business information, to the extent such information or records are reasonably designated as confidential, trade secret or proprietary information of the Disclosing Party before being delivered to the Receiving Party. Specifically, "Confidential Information" includes the information to be submitted pursuant to the RFP to Fairview by the Proposer under:

- (i) Section VII A, Paragraph C, "Financial Section;"
- (ii) Section VII A, Paragraph G, "Network Management and Access" (Note: Excel spreadsheet responses only are subject to this Agreement);
- (iii) Section VII B, Paragraph B, "Financial Section;"
- (iv) Section VII C, Paragraph B, "Financial Section;"
- (v) Section VII D, Paragraph C, "Financial Section;"
- (vi) Section VII D, Paragraph D, "Specialty Pharmacy Pricing;"
- (vii) Section VII D, Paragraph L, "Prescription Reimbursement Issues;"
- (viii) Section VII D, Paragraph N, "Formulary Management and Rebates;"
- and
- (ix) Section VII D, Paragraph O, "Prescription Drug Data."

Under no circumstances shall Section III E,F,G at Paragraph Q, "Proposed Fees," be deemed proprietary, trade secret or confidential information.

B. In addition to the foregoing, the following are expressly included within the definition of Confidential Information:

- (i) Any information or records, in whatever medium, that may be protected pursuant to any federal or state statutes including and without limitation, the New Jersey Personal Information and Privacy Protection Act of 1999 (P.L. 2017, c. 124), New Jersey Identity Theft Prevention Act (P.L.2006, c. 226), the Open Public Records Act (P.L. 1963, c. 73), the Fair Credit Reporting Act (15 U.S.C. 1681; P.L. 1997, c. 172), the Gramm-Leach Bliley Act of 1999 (Pub.L. 106-102), the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.), the Health Insurance Portability and

Accountability Act of 1996 (Public Law 104-191), the Stored Communications Act (18 U.S.C. 2701 et seq.), and the Electronic Communications Privacy Act of 1986 (18 U.S.C. 2510 et seq.); and

- (ii) Any information or records, in whatever medium, that may be protected pursuant to any regulatory scheme intended to protect information, or any order, resolution or determination of a court of competent jurisdiction or administrative board or other administrative body.

C. "Disclosing Party" means the Party disclosing Confidential Information to the Receiving Party pursuant to this Agreement. The term "Disclosing Party" includes, but is not limited to, that Party's representatives, agents, officers and employees.

D. "Receiving Party" means the Party receiving Confidential Information from the Disclosing Party pursuant to this Agreement. The term "Receiving Party" includes, but is not limited to, that Party's representatives, agents, officers and employees.

E. Confidential Information shall not include any information or records that:

- (i) are publicly known through no wrongful act or breach of obligation of confidentiality;
- (ii) were in the lawful possession of or known to the Receiving Party prior to the time it was communicated by the Disclosing Party or learned by the Receiving Party independent of the Disclosing Party and/or any one of its agents;
- (iii) the Receiving Party can demonstrate, through written documentation, were independently developed by employees or agents of the Receiving Party without use of any Confidential Information communicated to the Receiving Party;
- (iv) were rightfully obtained by the Receiving Party from a third party not known by the Receiving Party to be in breach of any obligation of confidentiality, and the third party did not breach any confidentiality previously held between the third party and the Disclosing Party; or
- (v) are in response to a valid order by a court of competent jurisdiction or other governmental body, are required by a lawful subpoena or are otherwise required to be disclosed in accordance with law, including the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., or are necessary to establish the right of either Party under this Agreement.

3. **CONFIDENTIALITY**

A. Fairview and Proposer shall maintain the confidentiality of all Confidential Information of the other and hold it in trust for the exclusive benefit of the other. All Confidential Information will remain the exclusive property of the Disclosing

Party and will be used by the Receiving Party exclusively for purposes of the procurement of the services by the Authority that are the subject of this Agreement. The Parties recognize and agree that one or more representatives of the Authority may be designated to assist Fairview in the review and evaluation of Proposer's response to the RFP and, therefore, may be provided with access to the Confidential Information. Such sharing of information shall not be deemed to be in violation of the terms of this Agreement. The Authority shall instruct any representatives of the Authority to maintain the confidentiality of the Confidential Information in accordance with the terms of this Agreement. Proposer recognizes and acknowledges that Fairview shall not be responsible for breaches of confidentiality or improper disclosure of Confidential Information by Authority representatives.

- B. Unless previously authorized in writing by the Disclosing Party, the Receiving Party will not use Confidential Information for any other purpose or for the benefit of itself or others, and will not disclose Confidential Information to anyone except as expressly provided herein.
- C. The Receiving Parties shall: (a) limit the disclosure of the Confidential Information to their respective directors, officers, employees, attorneys, auditors, affiliated entities, subcontractors, consultants, subconsultants or other agents (collectively, "Agents") to whom such disclosure is necessary to carry out the purposes of procuring services that are the subject of the RFP to which Proposer is responding; (b) ensure that such Agents acknowledge that the information is confidential before it is imparted to them and ensure that such Agents are bound by obligations restricting use and disclosure of the Confidential Information equivalent to those set out in this Agreement; (c) be responsible, jointly and severally, for enforcing the terms of the Agreement as to their current, prospective and former Agents, and to take such action, legal or otherwise, to the extent necessary, to cause them to comply with the terms and conditions of the Agreement including, but not limited to, seeking emergent relief for the issuance of a temporary, preliminary and permanent restraining order against any such Agents.

4. USE OF CONFIDENTIAL INFORMATION

The Parties acknowledge and agree that the Confidential Information covered by this Agreement shall be used solely in connection with the procurement by the Authority of the services that are the subject of this Agreement, and the Parties further acknowledge and agree that neither of them shall use the Confidential Information for any other purpose without the Disclosing Party's prior written consent. The Receiving Party shall further agree to:

- A. Use the Confidential Information only as provided by the Agreement;
- B. Hold in trust any and all Confidential Information received from the Disclosing Party, carefully restrict access to such Confidential

Information, and disclose the Confidential Information only to such of its Agents on a “need-to-know” basis for the purpose of the procurement by the Authority of the services that are the subject of this Agreement, which Agents have been advised by the Receiving Party of the terms of this Agreement;

- C. Protect, store, and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Authority and the Proposer, as the case may be, exercising its best judgment and best efforts, and solely for the purposes indicated in this Agreement;
- D. Not reproduce the Confidential Information in any form except as required to accomplish the purposes set forth in this Agreement;
- E. Not use the Confidential Information for any purpose or in any manner that would constitute a violation of any State and federal laws and regulations;
- F. Have no right, title or interest to the Confidential Information of the Disclosing Party, except as expressly provided by this Agreement;
- G. Not remove, modify or otherwise compromise any copyright, confidentiality, privilege, trademark or other proprietary rights notice provided with or on the Confidential Information.

5. **DISCLOSURE UNDER LEGAL PROCESS**

If any Receiving Party or its Agents become compelled by applicable law, regulation or by court or other governmental authority of competent jurisdiction to disclose any Confidential Information of the Disclosing Party, the Receiving Party shall provide the Disclosing Party with prompt written notice so that the Disclosing Party may seek, at its expense, an appropriate protective order or other remedy. The Receiving Party or its Agents may, without any liability hereunder, disclose the Confidential Information (i) as provided in the order compelling disclosure or (ii) only to the extent that it reasonably believes it is required to disclose pursuant to law, unless a protective order is obtained. The Receiving Party shall also be without any liability hereunder in disclosing Confidential Information if a waiver of compliance with this Agreement is received from the Disclosing Party, waiving compliance with the terms of this Agreement. Any waiver by the Disclosing Party in accordance with this Section 5 shall be within the sole discretion of the Disclosing Party and shall not be deemed continuing or a waiver of any other term or condition of this Agreement.

Court orders, including discovery requests, or freedom of information and open public records requests, including the New Jersey Common Law Right to Know and New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., seeking information

or documents regarding the information shared pursuant to this Agreement are subject to the terms of this Section 5 of the Agreement.

6. **REMEDY**

The Parties acknowledge that these covenants are reasonable and necessary for the protection of their respective Confidential Information. The Receiving Party acknowledges that disclosure of the Confidential Information in violation of this Agreement may cause irreparable harm to the Disclosing Party, the amount of which is difficult to estimate, making any remedy at law or in damages inadequate. If there should be any breach or threatened breach of the Agreement by the Receiving Party, the Disclosing Party shall be entitled to an ex-parte injunction prohibiting such conduct on a temporary or permanent basis, specific performance or other appropriate remedy for any such breach.

7. **NO THIRD-PARTY BENEFICIARIES**

No Party intends to create in any other individual or entity the status of third-party beneficiary and this Agreement shall not be constructed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the Parties and shall inure solely to their benefit.

8. **NO REASONABLE EXPECTATION OF THE CREATION OF A BINDING AGREEMENT FOR SERVICES**

Nothing in this Agreement shall create a reasonable expectation of the creation of a binding contract for services between the Authority and the Proposer.

9. **REPRESENTATIVE ACKNOWLEDGMENTS**

The Parties acknowledge that they have had an opportunity to review this Agreement with legal counsel, at their discretion, and the covenants made by and duties imposed upon the Parties here are fair, reasonable and necessary to protect the legitimate business interests of the Authority and the Proposer.

10. **AMENDMENTS**

This Agreement may be amended or modified only by a written instrument signed by a duly authorized representative of Fairview and the Proposer.

11. **MISCELLANEOUS**

- A. **GOVERNING LAW.** The Agreement shall be governed and interpreted for all purposes by the laws of the State of New Jersey, without reference to any conflict of laws principles that would require the application of the laws of a different

jurisdiction.

- B. **JURISDICTION; VENUE.** Any dispute, litigation, action or proceeding arising out of or related to this Agreement shall be venued in the Superior Court of New Jersey.
- C. **ENTIRE AGREEMENT.** This Agreement is the complete agreement of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous agreements relating to its subject matter. The provisions of the Agreement may not be modified, amended or waived except by a written instrument signed by both Parties.
- D. **OWNERSHIP.** All Confidential Information shall remain the exclusive property of the Disclosing Party, and no right, title, or interest in or to any of the Confidential Information or any material developed therefrom is transferred to the Receiving Party.
- E. **RELATIONSHIPS.** Nothing contained in this Agreement shall be deemed to constitute either Party a partner, joint venture or employee of the other Party for any purpose. Further, nothing contained in this Agreement shall require the Authority to enter into a services agreement with the Proposer.
- F. **ASSIGNMENT.** The Agreement may not be assigned, in whole or in part, by either Party without the prior written consent of the other Party. No permitted assignment shall relieve a Party of any of its responsibilities under the Agreement. Any assignment in violation of this Section shall be void. The Agreement shall be binding upon the Parties and their respective successors and assigns.
- G. **SEVERABILITY.** If any term, condition, or provision of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired, or invalidated in any way.
- H. **WAIVER.** No provision herein may be waived unless in writing and signed by the Party whose rights are thereby waived. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein. The Agreement may be modified or amended only by written agreement executed by the Parties.
- I. **HEADINGS.** The section headings contained in the Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of the Agreement.
- J. **NOTICES.** Any notice to a Party required or permitted hereunder shall be deemed to

have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service addressed as follows (except that immediate notice of a security breach in accordance with Section 6 hereof shall be by email and telephone communication, in addition to personal delivery, registered or certified mail or overnight delivery):

As to Fairview:

Michael

Fairview Insurance Agency Associates
Attn.: Joseph Graham
25 Fairview Ave.
Verona, NJ 07044
Email: jagraham@fairviewinsurance.com
Telephone: (973) 857-0870

As to the Proposer:

Attn.: _____

Email: _____

Telephone: _____

- K. COUNTERPARTS. The Agreement may be executed in counterparts and all such counterparts shall together constitute but one and the same instrument.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have executed the Agreement, effective as of the day and date last below written.

ATTEST:

Patricia Holmes

**FAIRVIEW INSURANCE AGENCY
ASSOCIATES**

By: Michael Graham

Print Name: Michael Graham

Title: Coo

Date: 6/8/21

ATTEST:

[NAME OF PROPOSER]

By: _____

Print Name: _____

Title: _____

Date: _____

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement"), effective as of the 8th day of June, 2021 (the "Effective Date"), by and between FOUNDATION RISK PARTNERS D/B/A FAIRVIEW INSURANCE AGENCY ASSOCIATES ("Fairview"), and THE NEW JERSEY TURNPIKE AUTHORITY (the "Authority"). Fairview and the Authority may be referred to herein individually as "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Fairview, for itself and on behalf of its operating subsidiaries and affiliates (collectively, "Fairview") provides certain consulting services (the "Services") to the Authority; and

WHEREAS, the Authority is a plan sponsor of one or more group health plans, which group health plan(s) is a Covered Entity as such term is defined in 45 CFR §160.103; and

WHEREAS, in order to provide the Services to the Authority, Fairview (1) needs to access, use, disclose and maintain Protected Health Information ("PHI"), as such term is defined below and (2) is a Business Associate, as such term is defined in 45 CFR§ 160.103, of the Authority when providing the Services; and

WHEREAS, the Parties desire to enter into this Agreement in compliance with the business associate agreement requirements of the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH") (collectively "HIPAA") and their implementing regulations.

NOW, THEREFORE, the parties, in consideration of the mutual covenants, agreements, and promises hereafter contained, and for good and valuable consideration, receipt of which is hereby acknowledged, hereby agree as set forth below:

1. Definitions.

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy and Security Rules (as defined below) as the same may be amended from time to time. Examples of specific definitions include, but are not limited to:

1.1. "Business Associate" shall have the same meaning as the term "business associate" in 45 CFR § 160.103 and, for purposes of this Agreement, shall mean Fairview.

1.2. "Breach" when capitalized, shall have the meaning set forth in 45 CFR § 164.402 (including all of its subsections); with respect to all other uses of the word "breach" in this Agreement, the word shall have its ordinary contract meaning (*i.e.*, a breach of contract.)

1.3. "Covered Entity" shall have the same meaning as the term "covered entity"

in 45 CFR § 160.103 and with regards to a party to this Agreement shall mean the Authority.

1.4. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of the Authority.

1.5. "Electronic Protected Health Information" shall have the same meaning as the term "electronic protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of the Authority.

1.6. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

1.7. "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.

1.8. "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of the Authority. By way of illustration only, the following information shall constitute PHI: name; address; birth date; telephone numbers; fax numbers; e-mail addresses; social security numbers; medical records; medical record numbers; plan or policy numbers; certificate or license numbers; vehicle identifiers; any other unique or identifying numbers, characteristics or codes.

1.9. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

1.10. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

1.11. "Security Incident" shall have the same meaning as the term "security incident" in 45 CFR § 164.304.

1.12. "Security Rule" shall mean the Standards for Security of Electronic Protected Health Information at 45 CFR Parts 160, 162, and 164.

1.13. "Unsecured Protected Health Information" shall have the same meaning as the term "unsecured protected health information" in 45 CFR § 164.402, limited to information created or received by Business Associate from or on behalf of the Authority.

2. Obligations and Activities of Business Associate

2.1. Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement, any existing or subsequent written agreement or contract with the Authority, or as required by law.

2.2. Business Associate shall maintain and use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement. Further, as required by the Security Rule, Business Associate shall implement, maintain and use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic Protected Health Information. Such safeguards shall include development, implementation, and maintenance of a comprehensive written information security program in compliance with applicable laws and designed to (A) protect the integrity and confidentiality of Electronic Protected Health Information; (B) protect against anticipated threats or hazards to the security, confidentiality and/or integrity of Electronic Protected Health Information; (C) protect against any unauthorized disclosure or use of Electronic Protected Health Information; (D) ensure computer and network security; and (F) assure secure disposal and destruction of Electronic Protected Health Information.

2.3. Business Associate shall mitigate, in cooperation with the Authority, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information and/or Electronic Protected Health Information by Business Associate in violation of this Agreement.

2.4. Business Associate shall report to the Authority: (1) any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required by 45 CFR § 164.410, and (2) any Security Incidents of which it becomes aware.

2.4.1. In the event of a Breach, such reporting shall be made to the Authority's designated Privacy Officer without unreasonable delay and in no case later than thirty calendar days of the "discovery" of a Breach, as that term is further described in 45 CFR § 164.410(a)(2). Upon request by the Authority, Business Associate shall, at no cost to the Authority, also provide notification of any Breach to affected individuals, the media, or the Secretary, subject to prior review and written approval by the Authority of the content of such notification; provided that the Authority furnishes Business Associate with any contact or other information necessary to provide the notices. The timing of Business Associate's provision of such notification will be established to ensure notifications are made as soon as reasonably possible but not more than thirty (30) days from discovery of breach. In the event that the Authority provides the required notification under this section, Business Associate will reimburse the Authority for the reasonable and actual expenses incurred as result of providing the notice.

2.5. Business Associate shall ensure that any Subcontractors (as defined in 45 CFR § 160.101) that create, receive, maintain, or transmit PHI on Business Associate's behalf agree to the same or more stringent restrictions and conditions that apply to Business Associate with respect to such information. Business Associate shall enter into appropriate written agreements outlining these obligations and obtain satisfactory assurances (as that term is contemplated in HIPAA) of such compliance by all subcontractors. To the extent Business Associate makes a disclosure under 45 CFR 164.504(e)(4), Business Associate will obtain reasonable assurances that PHI will be held in confidence and will not be used or disclosed outside of the intended purpose.

2.6. Business Associate shall, at the request of the Authority, make available the Protected Health Information and/or Electronic Protected Health Information of an Individual in a

Designated Record Set, as necessary to satisfy a request made of the Authority by a Covered Entity pursuant to the Covered Entity's responsibilities under 45 CFR § 164.524. Such Designated Record Set shall be delivered to the Authority in the format requested and within ten business days of the request.

2.7. Business Associate shall make any amendment(s) to Protected Health Information and/or Electronic Protected Health Information in a Designated Record Set as directed by the Authority for the purpose of the Authority's compliance with a request from a Covered Entity pursuant to the Covered Entity's obligations under 45 CFR § 164.526. Business Associate shall complete any request made by the Authority pursuant to this Section 2.7 within ten business days of the request.

2.8. Business Associate shall make its internal practices, books, and records, relating to the use and disclosure of Protected Health Information available to the Authority (or its designee or the involved Covered Entity, if Business Associate is so directed by the Authority) and to the Secretary (or the Secretary's designee), in a time and manner as required by the Authority or Secretary, for purposes of the Secretary confirming Business Associate's or the Authority's compliance with the Privacy Rule and the Security Rule.

2.9. Business Associate shall keep a record of disclosures of or access to PHI that must be provided under HIPAA to an Individual (upon their request) to whom the PHI relates. Business Associate shall comply with any request that the Authority makes to provide the Authority with information pertaining to such disclosures or access, in such format as the Authority may request. Business Associate shall complete any request made by the Authority pursuant to this Section 2.9 within ten business days of the request. Such provided information shall include any information necessary to satisfy the obligations imposed under 45 CFR § 164.528.

2.10. To the extent that the Authority requires Business Associate to carry out a Covered Entity's obligations under 45 CFR § 164 Subpart E, Business Associate shall comply with the requirements of that Subpart which apply to a Covered Entity in the performance of such obligations.

2.11. Business Associate acknowledges and shall adhere to any limitations on the disclosure and/or sale of PHI as required under 45 CFR § 164.508(d) and/or under HIPAA.

2.12. Business Associate shall annually train its workforce about Business Associate's privacy and security obligations under HIPAA.

3. Permitted Uses and Disclosures by Business Associate

3.1. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information as necessary to (A) perform functions, activities, or services for, or on behalf of, the Authority as specified in this Agreement or other current or subsequent agreements detailing the duties and obligations of the Parties; (B) for the proper

management and administration of Business Associate's business or to carry out Business Associate's legal responsibilities; and (C) as Required by Law.

3.2. Business Associate's use, disclosure and request for PHI shall follow any guidance issued by the U.S. Department of Health and Human Services ("HHS") regarding what constitutes "minimum necessary" with respect to the use or disclosure of PHI. Until such time that any such guidance is issued, Business Associate shall limit its use, disclosure, or request for PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.

3.3. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR § 164 if done by the Authority, except to the extent that the use or disclosure is (1) for the proper management and administration of Business Associate's business or to carry out Business Associate's legal responsibilities or (2) to provide Data Aggregation services relating to the health care operations of the Authority, unless otherwise prohibited by law.

3.4. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information and/or Electronic Protected Health Information to provide Data Aggregation services to the Authority as permitted by 45 CFR § 164.504(e)(2)(i)(B).

3.5. Business Associate may de-identify PHI in accordance with the requirements of 45 CFR §164.514(a)-(c), and may use or disclose the information that has been de-identified.

3.6. Business Associate may use Protected Health Information and/or Electronic Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

4. Obligations of the Authority

4.1. Authority shall notify Business Associate of any limitation(s) in the notice of privacy practices of the Authority under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI. Business Associate shall comply with any limitations on the use or associated disclosure of PHI which are articulated therein

4.2. Authority shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI. Business Associate shall adjust its use or disclosure of associated PHI to conform with the change or revocation.

4.3. Authority shall notify Business Associate of any restriction on the use or disclosure of PHI that the Authority has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI. Business Associate shall adjust its use or disclosure of associated PHI to conform with said restriction.

4.4. Authority shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except to the extent that the use or disclosure is (1) for the proper management and administration of Business Associate's business or to carry out Business Associate's legal responsibilities or (2) to enable Business Associate to provide Data Aggregation services.

5. Reimbursement

5.1. In addition to its obligation to mitigate the known harmful effects of any improper use or disclosure of PHI under Section 2.3 of this Agreement, Business Associate shall reimburse the Authority and its affiliates for any civil fines or penalties imposed upon the Authority as a result of (1) any such use or disclosure of PHI, including Breaches and Security Incidents that are solely caused by Business Associate's violation of the terms and conditions of this Agreement and (2) Business Associate's failure to compliantly and timely provide any notice required by Section 2.4 of this Agreement. If the improper use or disclosure is solely caused by Business Associate's violation of the terms and conditions of this Agreement, Business Associate further agrees to cover any expenses related to mitigation efforts undertaken by either the Authority or the Business Associate that the parties have mutually agreed upon after good faith discussions.

6. Term and Termination

6.1. The term of this Agreement shall be effective as of the Effective Date and shall terminate on the date this Agreement is terminated for any reason.

6.2. Either party may terminate this Agreement if the other has breached or violated a material term of this Agreement and the offending party has not cured the breach or ended the violation within ten calendar days of the other party's written notice of the violation.

6.3. Upon termination of this Agreement, for any reason, Business Associate shall, if feasible, return or destroy all Protected Health Information without retaining any copies and shall provide the Authority with a written and signed certification to that effect.

6.4. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to the Authority notification of the conditions that make return or destruction not feasible. Upon determining that return or destruction of PHI is not feasible, Business Associate shall extend 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 not feasible, for so long as Business Associate maintains such PHI. The Authority acknowledges that PHI created solely by and consistent with Business Associate's automatic data back-up and archiving procedures in order to memorialize the Services and comply with its documentation and business continuity programs may not feasibly be returned or destroyed

6.5. The requirements of this Section 6 also apply to PHI that is in the possession of any and all subcontractors of Business Associate.

7. Miscellaneous

7.1. Regulatory References. A reference in this Agreement to a section in the Privacy and Security Rules means the section as in effect or as amended.

7.2. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the parties to comply with the requirements of the Privacy Rule, the Security Rule, and HIPAA and the Authority's obligations under its Business Associate Agreements with Covered Entities.

7.3. Survival. The respective rights and obligations of Business Associate under Sections 5 and 6 of this Agreement shall survive the termination of this Agreement.

7.4. Interpretation. This Agreement shall be interpreted in the following manner: (a) any ambiguity shall be resolved in favor of a meaning that permits the parties to comply with the Privacy Rule and the Security Rule; (b) any inconsistency between a provision of this Agreement and the Privacy Rule or the Security Rule, including all amendments, as interpreted by HHS, a court or another regulatory authority with authority over the parties, shall be interpreted according to the interpretation of HHS, the court or the regulatory authority; (c) any provision of this Agreement that differs from those mandated by the Privacy Rule or the Security Rule, but is nonetheless permitted by the Privacy Rule or the Security Rule, shall be adhered to as stated in this Agreement; and (d) in the event of any inconsistency or conflict between this Agreement and any other written agreement between the parties, the terms, provisions and conditions of this Agreement shall control and govern, solely as they relate to the use and/or disclosure of PHI.

7.5. Entire Agreement. This Agreement constitutes the entire agreement between the parties related to the use and disclosure of PHI. This Agreement supersedes all prior negotiations, discussions, representations or proposals, whether oral or written. This Agreement may not be modified unless done in writing and signed by a duly authorized representative of both parties. If any provision of this Agreement, or part thereof, is found to be invalid, the remaining provisions shall remain in effect.

7.6. Assignment. This Agreement shall be binding on the successors and assigns of the Authority and the Business Associate. However, this Agreement may not be assigned in whole or in part, without the written consent of the other party. Any attempted assignment in violation of this provision shall be null and void.

7.7. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original. Facsimile or Portable Document Format (PDF) copies thereof shall be deemed to be originals.

7.8. Governing Law. Except to the extent preempted by federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of New

Jersey.

7.9. Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any third-party beneficiary rights in any person, including any participant or beneficiary of any employee benefit plan sponsored by the Authority.

7.10. Informal Resolution. If any controversy, dispute, or claim arises between the parties with respect to this Agreement, the parties shall make good faith efforts to resolve such matters informally.

7.11. Notices. All notices to be given pursuant to the terms of this Agreement shall be in writing and shall be sent certified mail, return receipt requested, postage prepaid or by courier service. If to the Covered Entity, the notice shall be sent to the Authority's General Counsel, at 1 Turnpike Plaza, P.O. Box 5042, Woodbridge, New Jersey 07095. If to Business Associate, the notice shall be sent to Joseph Graham, Fairview Insurance Agency Associates, 25 Fairview Ave., Verona, NJ 07044.

IN WITNESS WHEREOF, the parties execute this Agreement by their duly authorized representatives as of the Effective Date.

**FAIRVIEW INSURANCE AGENCY
ASSOCIATES**

NEW JERSEY TURNPIKE AUTHORITY

Signature: 

Signature: _____

Printed Name: Michael Graham

Printed Name: _____

Title: COO

Title: _____

Dated: 6/8/21

Dated: _____