

**NC Local Government Debt Setoff Clearinghouse Program  
Business Associate Rider**

This Business Associate Rider (the “BA Rider” is hereby made a part of the Memorandum of Understanding and Agreement (the “Agreement”) entered into between the CLAIMANT AGENCY and the CLEARINGHOUSE (the “Parties”), dated \_\_\_\_\_, and in accordance with Section X(A) thereof, modifies and amends said Agreement as provided.

WITNESSETH:

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 promulgated regulations governing the confidentiality (hereinafter the “HIPAA Privacy Rule”) and security and integrity (hereinafter the “HIPAA Security Rule”) of health information. All relevant regulations are incorporated into 45 CFR Parts 160 and 164; and

WHEREAS, the Parties have entered into the Agreement, under which CLEARINGHOUSE will provide certain services to CLAIMANT AGENCY, and, pursuant to such arrangement, CLEARINGHOUSE may be considered a “business associate” of CLAIMANT AGENCY as defined in the HIPAA Privacy Rule; and

WHEREAS, CLEARINGHOUSE may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under the Agreement; and

WHEREAS, CLEARINGHOUSE may create, receive, maintain, or transmit Electronic Protected Health Information in fulfilling its responsibilities under the Agreement.

THEREFORE, in consideration of the Parties’ continuing obligations under the Agreement, the Parties agree to the provisions of this BA Rider in order to address the requirements of the HIPAA Privacy Rule and the HIPAA Security Rule, and to protect the interests of the Parties.

**I. DEFINITIONS**

Except as otherwise defined herein, terms used in this BA Rider shall have the same meaning as those terms set forth in the HIPAA Privacy and Security Rules.

## II. CONFIDENTIALITY REQUIREMENTS

- A. CLEARINGHOUSE shall use or disclose any protected health information solely for the purposes of submitting delinquent debts to the North Carolina Department of Revenue, on behalf of local agencies, pursuant to the Setoff Debt Collection Act, Article 1 of Chapter 105A of the North Carolina General Statutes, as permitted or required by the Agreement, or as required by law;
- B. CLEARINGHOUSE shall ensure that its agents, including a subcontractor, to whom it provides protected health information received from or created by CLEARINGHOUSE on behalf of CLAIMANT AGENCY, agrees to the same restrictions and conditions that apply to CLEARINGHOUSE with respect to such information.
- C. CLEARINGHOUSE shall take reasonable steps to ensure that its employees' actions or omissions do not cause CLEARINGHOUSE to breach the terms of this BA Rider;
- D. CLEARINGHOUSE shall implement appropriate safeguards to prevent use or disclosure of protected health information other than as permitted or required by this BA Rider;
- E. CLEARINGHOUSE shall permit the Secretary of Health and Human Services to audit CLEARINGHOUSE's records and practices related to use and disclosure of protected health information to ensure CLAIMANT AGENCY's compliance with the terms of the HIPAA Privacy Rule;
- F. CLEARINGHOUSE shall report to CLAIMANT AGENCY any use or disclosure of protected health information which is not in compliance with the terms of this BA Rider of which it becomes aware; and
- G. CLEARINGHOUSE shall mitigate, to the extent practicable, any harmful effect that is known to CLEARINGHOUSE of a use or disclosure of protected health information by CLEARINGHOUSE in violation of the requirements of this BA Rider.
- H. Notwithstanding the prohibitions set forth in this BA Rider or the Agreement, CLEARINGHOUSE may use and disclose protected health information if necessary, for the proper management and administration of CLEARINGHOUSE or to carry out the legal responsibilities of CLEARINGHOUSE, provided that as to any such disclosure, the following requirements are met:
  - i. the disclosure is required by law; or
  - ii. CLEARINGHOUSE obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies CLEARINGHOUSE of any instances of which it is aware in which the confidentiality of the information has been breached.

### **III. SECURITY OF ELECTRONIC PROTECTED HEALTH INFORMATION**

- A. CLEARINGHOUSE shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that the CLEARINGHOUSE creates, receives, maintains, or transmits on behalf of the CLAIMANT AGENCY, as required by the Security Rule;
- B. CLEARINGHOUSE shall ensure that its agents, including a subcontractor, to whom it provides electronic protected health information received from or created by CLEARINGHOUSE on behalf of CLAIMANT AGENCY, agrees to the same restrictions and conditions that apply to CLEARINGHOUSE with respect to such information. In addition, CLEARINGHOUSE agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause CLEARINGHOUSE to breach the terms of this BA Rider;
- C. CLEARINGHOUSE shall report to CLAIMANT AGENCY any security incident related to electronic protected health information which is not in compliance with the terms of this BA Rider of which it becomes aware.

### **IV. AVAILABILITY OF PROTECTED HEALTH INFORMATION**

- A. CLEARINGHOUSE shall at the request of CLAIMANT AGENCY, provide access to protected health information in a designated record set to CLAIMANT AGENCY or, as directed by CLAIMANT AGENCY, to an individual, in a time and manner sufficient to permit CLAIMANT AGENCY to comply with the requirements of 45 CFR 164.524.
- B. CLEARINGHOUSE shall at the request of CLAIMANT AGENCY or an individual, make any amendment(s) to protected health information in a designated record set that are directed by or agreed to by CLAIMANT AGENCY, in a time and manner sufficient to permit CLAIMANT AGENCY to comply with the requirements of 45 CFR 164.526.
- C. CLEARINGHOUSE shall document disclosures of protected health information and information related to such disclosures in a manner sufficient to permit CLAIMANT AGENCY to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with 45 CFR 164.528 and provide such documentation to CLAIMANT AGENCY or an individual as directed by CLAIMANT AGENCY.

### **V. TERMINATION**

- A. Term: This BA Rider terminates when the Agreement terminates or as provided in Paragraph V-B. below (termination for cause).

- B. Termination for cause: Upon CLAIMANT AGENCY's knowledge of a material breach by CLEARINGHOUSE, CLAIMANT AGENCY shall either:
  - i. provide an opportunity for CLEARINGHOUSE to cure the breach or end the violation or, if CLEARINGHOUSE does not cure the breach or end the violation within the time specified by CLAIMANT AGENCY, terminate this BA Rider and the Agreement; or
  - ii. immediately terminate this BA Rider and the Agreement if CLEARINGHOUSE has breached a material term of this BA Rider and cure is not possible.
  
- C. Return or destruction of protected health information: At termination of this BA Rider, the Agreement, or upon request of CLAIMANT AGENCY, whichever occurs first,
  - i. CLEARINGHOUSE shall if feasible, return or destroy all protected health information received from or created or received by CLEARINGHOUSE on behalf of CLAIMANT AGENCY that CLEARINGHOUSE still maintains in any form. CLEARINGHOUSE shall only destroy protected health information with the written approval of CLAIMANT AGENCY. After return or destruction, CLEARINGHOUSE shall retain no copies of such information.
  - ii. CLEARINGHOUSE shall if return or destruction is not feasible, CLEARINGHOUSE will provide CLAIMANT AGENCY with documentation explaining the reason that it is not feasible. If the protected health information is not returned or destroyed, CLEARINGHOUSE will extend the protections of this BA Rider to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible
  
- D. Survival: The obligations of CLEARINGHOUSE under this BA Rider shall survive the expiration, termination, or cancellation of this BA Rider, the Agreement and/or the business relationship of the Parties, and shall continue to bind CLEARINGHOUSE, its agents, employees, contractors, successors, and assigns as set forth herein.

## **VI. MISCELLANEOUS**

- A. All protected health information that is created or received by CLAIMANT AGENCY and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by CLAIMANT AGENCY or its operating units to CLEARINGHOUSE or is created or received by CLEARINGHOUSE on CLAIMANT AGENCY's behalf shall be subject to this BA Rider.

- B. A reference in this BA Rider to a section in the HIPAA Privacy or Security Rules means the section as in effect or as amended.
- C. In the event of an inconsistency between the provisions of this BA Rider (including definitions) and mandatory provisions of the HIPAA Privacy or Security Rules, as amended, the HIPAA Rules shall control. Where provisions of this BA Rider are different than those mandated in the HIPAA Privacy or Security Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this BA Rider shall control.
- D. Except as expressly stated herein or the HIPAA Privacy Rule or the HIPAA Security Rule, the parties to this BA Rider do not intend to create any rights in any third parties.
- E. This BA Rider may be amended or modified only in a writing signed by the Parties.
- F. Except as provided in this paragraph, no Party may assign its respective rights and obligations under this BA Rider without the prior written consent of the other Party. It is specifically understood and agreed to by the CLAIMANT AGENCY that CLEARINGHOUSE will assign certain of its rights and obligations under this BA Rider to Five Star Computing, Inc., its third party administrator, which performs services for the CLEARINGHOUSE under the Agreement.
- G. None of the provisions of this BA Rider 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 BA Rider and any other agreements between the Parties evidencing their business relationship.
- H. This BA Rider will be governed by the laws of the State of North Carolina.
- I. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- J. The parties agree that, in the event that any documentation of the arrangement pursuant to which CLEARINGHOUSE provides services to CLAIMANT AGENCY contains provisions relating to the use or disclosure of protected health information that are more restrictive than the provisions of this BA Rider, the provisions of the more restrictive documentation will control.
- K. In the event that any provision of this BA Rider is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this BA Rider will remain in full force and effect.

- L. The headings in this BA Rider are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

IN WITNESS WHEREOF, the parties have caused this BA Rider to be executed as of

\_\_\_\_\_.

CLAIMANT AGENCY:

CLEARINGHOUSE:

By:\_\_\_\_\_

By:\_\_\_\_\_

Title:\_\_\_\_\_

Title:\_\_\_\_\_

Claimant Agency:

\_\_\_\_\_

By:\_\_\_\_\_

Title:\_\_\_\_\_