



WellDyneRxWEST Customer (TPA, Broker, Consultant, Group Health Plan, and other).

RE: HIPAA Business Associate Agreement – Effective 4/14/04
Business Associate: WellDyneRxWEST, Inc., a Colorado Corporation

Dear Customer:

Pursuant to the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Plans are required to have Business Associate Agreements with entities serving those Plans. Attached please find the HPAA Privacy Business Associate Agreement (BAA) that WellDyneRxWEST will operate under for services it provides to you. We provide this agreement as a protection for our customers and with the understanding that WellDyneRxWEST will process claims and perform other services under this BAA until asked by specific customers to enter into a different agreement. This agreement is provided, in its entirety, beginning on the next page.

At your earliest opportunity, please review it carefully and forward it immediately to the appropriate authorized representative in your organization for their immediate review. The Agreement is effective as of the Plan's HIPAA Privacy compliance date, April 14, 2004.

NOTE: This Agreement, as outlined in Section 7, shall be deemed accepted by your company by its continued payment for services and therefore requires no endorsement by an authorized representative in your company. However, if for any reason you conclude you cannot abide by this Agreement, you must notify us in writing within thirty (30) days of receipt of this Agreement.

Thank you for your continued use of our services. Please contact us with any questions you may have.

Best regards,

A handwritten signature in black ink, appearing to read 'DR King'.

David R. King
CIO and Compliance Officer
WellDyneRxWEST, Inc.

enc. Business Associate Agreement



**Business Associate Agreement
WellDyneRxWEST as Business Associate**

THIS AGREEMENT is entered into on this 14th day of April, 2004 between customer(s) of WellDyneRxWEST (hereinafter referred to as “Contracting Entity” and WellDyneRxWEST, Inc., a Colorado corporation (hereinafter referred to as “Business Associate”) or at such subsequent date as required by the Privacy Rule.

The parties intend that this Agreement be effective as of the date that “Contracting Entity” contracts for services with WellDyneRxWEST, Inc., a Colorado corporation (hereinafter referred to as “Business Associate”). This Agreement shall be in place between WellDyneRxWEST and its customers where Protected Health Information is provided to or processed by WellDyneRxWEST on behalf of the “Contracting Entity”.

1. Definitions

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.

(a) “Contracting Entity” “Contracting Entity” shall mean all Third Party Health Plan Administrators, Health Plans, Group Health Plans, and/or Health Plan Brokers/Consultants, or other entities that contract with WellDyneRxWEST to provide Pharmacy Benefit Management and/or other services.

(b) “Business Associate.” “Business Associate” shall mean WellDyneRxWEST, Inc.

(c) “Contract.” “Contract” shall mean that certain Contract by and between Business Associate and Contracting Entity.

(d) “Individual.” “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).

(e) “Plan.” “Plan” shall mean Contracting Entity if it is a Group Health Plan. Otherwise, “Plan” shall mean the Group Health Plan that hired Contracting Entity if Contracting Entity is a Third Party Administrator or Broker.

(f) “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.

(g) “Protected Health Information.” “Protected Health Information” shall have the same meaning as the term “protected health information” as defined in 45 CFR § 160.103, which also is part of the Security Standards for the Protection of Electronic Protected Health Information, 45 CFR Parts 160 and 164, subparts A and C, (the "Security Standards") set forth by HHS pursuant to HIPAA.



(h) “Required by Law.” “Required by Law” shall have the same meaning as the term “required by law” in 45 CFR 164.501.

(i) “Secretary.” “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.

2. Obligations of Business Associate

(a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.

(b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement, and to implement Administrative, Physical, and Technical Safeguards (each as defined in 45 CFR § 164.304) that reasonably and appropriately protect the Confidentiality, Integrity, and Availability (each as defined in 45 CFR § 164.304) of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity as required by the Security Standards.

(c) 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.

(d) Business Associate agrees to report to Contracting Entity any use or disclosure of the Protected Health Information not provided for by this Agreement, or any Security Incident (as defined in 45 CFR § 164.304) of which it becomes aware.

(e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Electronic PHI created, received, maintained, or transmitted by the Business Associate on behalf of the Covered Entity, agrees to implement reasonable and appropriate safeguards to protect such Electronic PHI.

(f) Business Associate agrees to provide access, at the request of Contracting Entity, and in a timely manner, to Protected Health Information in a Designated Record Set, to Contracting Entity or, as directed by Contracting Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.

(g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Contracting Entity directs or agrees to pursuant Privacy Standards, the Security Standards and HIPAA at the request of Contracting Entity or an Individual, and in a timely manner.

(h) Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business



Associate on behalf of, Contracting Entity available to the Secretary, in a timely manner, for purposes of the Secretary determining Contracting Entity's compliance with the Privacy Rule.

(i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Contracting Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(j) Business Associate agrees to provide Individual, in a timely manner, information collected in accordance with Section 2(i) of this Agreement, to permit Contracting Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

3. Permitted Use and Disclosures by Business Associate

(a) Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Contracting Entity as specified in the Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Contracting Entity or the minimum necessary policies and procedures of the Contracting Entity. Notwithstanding any other provision contained herein, Contracting Entity specifically authorizes Business Associate to disclose Protected Health Information to Plan or the Plan's Broker, or at Business Associate's option, to disclose such information to Contracting Entity and Contracting Entity agrees to disclose such information to the Plan or the Plan's Broker.

(b) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(c) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(d) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR Sec. 164.502(j)(1).

4. Obligations of Contracting Entity

(a) Contracting Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Contracting Entity in accordance with 45 CFR 164.520, to the



extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

(b) Contracting Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

(c) Contracting Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Contracting Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

(d) Contracting Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Contracting Entity.

5. Term and Termination

(a) Term. The Term of this Agreement shall be effective as of the date hereof and shall terminate upon termination of the Contract.

(b) Termination for Cause. Upon Contracting Entity's knowledge of a material breach by Business Associate, Contracting Entity shall provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within thirty (30) days from written notification.

(c) Effect of Termination. Upon termination of this Agreement, for any reason, Business Associate may elect to return or destroy all Protected Health Information received from Contracting Entity, or created or received by Business Associate on behalf of Contracting Entity or Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate.

6. Miscellaneous

(a) Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

(b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Contracting Entity to comply with the



requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L No. 104-191.

(c) Third Party Beneficiaries. This Agreement has been made and is made solely for the benefit of the parties named as parties to the agreement and their respective successors and permitted assigns. Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and permitted assigns.

(d) Indemnity. Each Party agrees to defend, indemnify and hold the other and its officers, directors, agents, affiliates, distributors, franchisees and employees harmless against any loss, damage, expense, or cost, including reasonable attorneys fees (including allocated costs for in-house legal services) ("Liabilities") arising out of any claim, demand, proceeding, or lawsuit by a third party resulting from any act or omission of a failure of the indemnifying party to comply with the terms of this Agreement.

(e) Waiver by Accepting Varied Performance. No waiver of any provision or consent to any action shall constitute a waiver of any other provision or consent to any other action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a party to provide a waiver in the future except to the extent specifically set forth in writing. Any waiver given by a party shall be null and void if the party requesting such waiver has not provided a full and complete disclosure of all material facts relevant to the waiver requested.

(f) Independent Contractors. The Parties to this Agreement are independent contractors. Neither Party is an agent, representative or employee of the other Party. Neither Party will have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement will not be interpreted or construed to create an association, agency, joint venture or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.

(g) Amendments and Modifications. No amendment, modification, or supplement to this Agreement shall be binding on any of the parties unless it is in writing and signed by the parties in interest at the time of the modification.

(h) Integration. This Agreement and all Exhibits hereto, as well as agreements and other documents referred to in this Agreement constitute the entire agreement between the parties with regard to the subject matter hereof and thereof. This Agreement supersedes all previous agreements between or among the parties. There are no agreements, representations, or warranties between or among the parties other than those set forth in this Agreement or the documents and agreements referred to in this Agreement.

(i) Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable,



or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this section, then this stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

(j) Consent to Jurisdiction and Forum Selection. The parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State and Federal courts located in the County of Denver, State of Colorado.

(k) Choice of Law. This Agreement shall be governed by and construed under the laws of the State of Colorado without consideration of its conflict of laws provisions.

(l) Further Assurances. The parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

(m) Notice. Any notice, approval, request, authorization, direction or other communication under this Agreement will be given in writing and will be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered by electronic mail or by confirmed facsimile; (ii) on the delivery date if delivered personally to the Party to whom the same is directed; (iii) one business day after deposit with a commercial overnight carrier, with written verification of receipt; or (iv) five business days after the mailing date, if sent by U.S. mail, return receipt requested, postage and charges prepaid, or any other means of rapid mail delivery for which a receipt is available.

7. **BY RECEIPT OF AGREEMENT,** Contracting Entity shall be legally bound by this Agreement upon the remuneration for services provided to Contracting Entity, subsequent to the date this Agreement is received by Contracting Entity. Should Contracting Entity object to this Agreement in part or in whole, Contracting Entity should address those objections in writing to Business Associate as identified on Page 1 of the Agreement within thirty (30) days of receipt of this Agreement. provide