HIPAA BUSINESS ASSOCIATE AND PRIVACY SERVICES SUBCONTRACT

This HIPAA Business Associate and Privacy Services Subcontract (this "Subcontract") is entered into as of the _____ day of _____ 2010 by and between Bupa Worldwide Corporation, a Florida corporation ("Business Associate") and _____ ("Subcontractor").

RECITALS

WHEREAS, Business Associate serves as the managing general agent and may perform other functions, activities or services for or on behalf of a "Covered Entity" as that term is defined under the U.S. Department of Health and Human Services ("HHS") rule contained in 45 C.F.R. Part 160 and Part 164, Subparts A and E (the "Privacy Rule") and the rule contained in 45 C.F.R. Part 160 and Part 164, Subparts A and C (the "Security Rule"), which were promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), as part of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5);

WHEREAS, Business Associate and Subcontractor have entered into an agreement in which Subcontractor has agreed to provide certain services to Business Associate ("Subcontracted Services").

WHEREAS, in the course of the performance of Subcontracted Services for Business Associate, Subcontractor and its employees, agents, advisors, consultants and subcontractors, may be given access to or create "Protected Health Information," including "Electronic Protected Health Information," as those terms are defined in the Privacy and Security Rules; and

WHEREAS, Business Associate and Subcontractor desire to protect the privacy and security of any "Protected Health Information," including "Electronic Protected Health Information," as those terms are defined in the Privacy and Security Rules created or received by Subcontractor from or on behalf of the Business Associate when providing the Subcontracted Services, in compliance with the Privacy Rule, Security Rule, HIPAA and HITECH Act; and

WHEREAS, HIPAA requires the Business Associate to enter into a contract with Subcontractor to provide for the protection of the privacy and security of Protected Health Information, and HIPAA prohibits the disclosure to or use of Protected Health Information by Subcontractor if such a contract is not in place.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

A.   <u>Definitions</u>. For purposes of this Agreement:

1.   "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. §160.103 and shall include a person who qualifies as a Personal Representative in accordance with 45 C.F.R. § 164.502(g).

2.   "Breach of Unsecured Protected Health Information" shall have the same meaning as the terms "Breach" and "Unsecured Protected Health Information" in 45 C.F.R. § 164.402.

3.   "Electronic Protected Health Information" or "EPHI" shall have the same meaning as the term "Electronic Protected Health Information" in 45 C.F.R. § 160.103 except, for purposes of this Subcontract, the term shall be limited to Electronic Protected Health Information created or received by Subcontractor from or on behalf of Business Associate.

4. "Protected Health Information" or "PHI" shall have the same meaning as the term "Protected Health Information" in 45 C.F.R. § 160.103 except, for purposes of this Subcontract, the term shall be limited to Protected Health Information created or received by Subcontractor from or on behalf of Business Associate.

5. "Required By Law" shall have the same meaning as the term "Required by Law" in 45 C.F.R. § 164.501.

6. "Secretary" shall mean the Secretary of HHS or his designee.

7. "Subcontracted Services" shall mean the services provided by Subcontractor pursuant to the Underlying Agreement(s), or if no such agreement(s) are in effect, the services Subcontractor performs on behalf of the Business Associate.

8. "Underlying Agreement(s)" shall mean the services agreement executed by Business Associate and Subcontractor.

9. Terms used, but not otherwise defined, in this Subcontract shall have the same meaning as those terms in the Privacy Rule, the Security Rule or the HITECH Act and the regulations promulgated thereunder.

B. <u>Permitted Uses and Disclosures of PHI.</u> Subcontractor is authorized to use and disclose PHI only for the following purposes:

1. Subcontractor may use and disclose PHI as necessary to perform Subcontracted Services, provided that such use or disclosure would not violate the Privacy Rule if done by Business Associate.

2. Subcontractor may use and disclose PHI as Required by Law.

3. Subcontractor may use PHI for the proper management and administration of its business. Subcontractor may disclose PHI for the proper management and administration of its business, provided Subcontractor obtains from any recipient of such PHI reasonable assurances that the PHI will remain confidential and be used or further disclosed only for the purpose for which it was disclosed and the recipient will notify Subcontractor of any instances in which confidentiality of the PHI was breached.

C. <u>Privacy and Security Obligations</u>. Subcontractor shall:

1. Not use or further disclose PHI other than as permitted or required by this Subcontract, or as Required by Law. Subcontractor shall limit its use, disclosure, or request of PHI, to the extent practicable, to the limited data set as defined in 45 C.F.R. §164.514(e)(2), or, if additional PHI is needed, to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request, in accordance with any guidance issued by HHS pursuant to Section 13405(b) of the HITECH Act and the minimum necessary policies and procedures of Business Associate.

2. Implement and maintain appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Subcontract. Subcontractor shall comply with all requirements of the HITECH Act related to privacy that apply to covered entities.

3.   Implement and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains, or transmits on behalf of Business Associate, as required by the Security Rule, or to prevent use or disclosure of EPHI other than as provided for by this Subcontract. Subcontractor shall comply with 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316 as if it were a covered entity under the Security Rule. Subcontractor shall also comply with all requirements of the HITECH Act related to security that apply to covered entities.

4.   Report to Business Associate any Breach of Unsecured Protected Health Information, as required by 45 C.F.R. § 164.410, without unreasonable delay and in no case later than 10 days after an employee or agent of Subcontractor discovers the Breach.   Subcontractor's notice to Business Associate shall include; (a) the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Subcontractor to have been, accessed, acquired, used or disclosed as a result of the Breach, (b) a brief description of the incident, (c) the date the Breach occurred, (d) the date the Breach was discovered, (e) the type of PHI involved, (f) steps an Individual should take to protect him/herself from potential harm resulting from the Breach, (g) a brief description of steps the Subcontractor has taken to investigate, mitigate losses and protect against further Breaches, and (h) contact information for Individuals to ask questions, including a toll-free number, e-mail address, website or postal address.

5.   Report to Business Associate any use or disclosure of PHI by Subcontractor not provided for by this Subcontract, or any Security Incident of which an employee of Subcontractor becomes aware, without reasonable delay and in no case later than 10 days after an employee or agent of Subcontractor becomes aware of such impermissible use or disclosure.

6.   Take all reasonable measures requested by Business Associate to mitigate any harmful effects of a use or disclosure of PHI by Subcontractor that is in violation of the requirements of this Subcontract.

7.   Ensure that any agent or subcontractor to whom Subcontractor provides PHI agrees to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including but not limited to, the requirement that the agent or subcontractor implement reasonable and appropriate safeguards to protect EPHI.

8.   Make available PHI, including any PHI maintained in an electronic health record, for inspection and copying to the Individual to the extent required by 45 C.F.R. § 164.524 and Section 13405(e) of the HITECH Act and the regulations promulgated thereunder, as follows:

    a)   Subcontractor shall not directly provide access to, or a copy of, PHI to an Individual.

    b)   If Subcontractor receives directly a request from an Individual for inspection and copying of the Individual's PHI, Subcontractor shall notify Business Associate of the request no later than five (5) business days after Subcontractor's receipt of the request. In the event Business Associate asks that Subcontractor provide to Business Associate a copy of PHI in Subcontractor's possession in order to respond to an Individual's request, Subcontractor shall provide the copy no later than

twelve (12) business days after Subcontractor's receipt of the Business Associate's request.

9.   Make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526, as follows:

    a)   Subcontractor shall not amend PHI pursuant to an Individual's request unless directed to do so by Business Associate.

    b)   If Subcontractor receives a request from an Individual for amendment of the Individual's PHI, Subcontractor shall notify Business Associate of the request no later than five (5) business days after Subcontractor's receipt of the request.

    c)   If Business Associate instructs Subcontractor to amend PHI held by Subcontractor, Subcontractor shall make the amendment no later than twelve (12) business days after receipt of Business Associate's instruction.

    d)   If an amendment to PHI is denied, and the Individual submits a statement of disagreement for inclusion in a record that relates to PHI held by Subcontractor, Business Associate shall provide Subcontractor with a copy of the statement of disagreement, and Subcontractor shall file the statement of disagreement with the PHI held by the Subcontractor. Subcontractor shall not file a statement of disagreement received from an Individual unless directed to do so by Business Associate.

10.   Make available, as expeditiously as possible, the information required to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528, as amended by Section 13405(c) of the HITECH Act and the regulations promulgated thereunder, as follows:

    a)   Subcontractor shall not directly provide an accounting of disclosures to an Individual.

    b)   If Subcontractor receives a request from an Individual for an accounting of disclosures of that Individual's PHI, Subcontractor shall notify Business Associate of the request no later than five (5) business days after Subcontractor's receipt of the request.

    c)   In accordance with 45 C.F.R. § 164.528(b), as amended by the HITECH Act, Subcontractor shall keep records of all disclosures for which a covered entity must account under such section of the Privacy Rule and shall provide such records to Business Associate no later than twelve (12) business days after Subcontractor's receipt of Business Associate's request for such information.

11.   Within a reasonable time (as determined by Business Associate in its sole discretion) after receiving notice from Business Associate, make available Subcontractor's internal practices, books and records relating to the use and disclosure of PHI to Business Associate and, upon Business Associate's request, to the Secretary for purposes of determining Business Associate's compliance with the Privacy Rule.

12. In accordance with the terms set forth in the Underlying Agreement, return or destroy all PHI received from Business Associate, or created or received by Subcontractor on behalf of Business Associate, that Subcontractor still maintains in any form and retain no copies of such PHI or, if such return or destruction is not feasible, extend the protection of this Subcontract to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible.

13. As of the effective date of Section 13405(d) of the HITECH Act, not, directly or indirectly, receive remuneration in exchange for any PHI of any Individual, except as otherwise permitted under the Privacy Rule and Section 13405(d) of the HITECH Act and with the advance written approval of Business Associate.

14. Not use or disclose PHI for Marketing, except as otherwise permitted under the Privacy Rule and Section 13406(a) of the HITECH Act and with the advance written approval of Business Associate.

D. <u>Compliance with Standard Transactions</u>. If Subcontractor conducts Standard Transactions (45 C.F.R. Part 162) with or on behalf of Business Associate, Subcontractor will comply, and will require any subcontractor or agent involved with the conduct of such Standard Transactions to comply, with each applicable requirement of 45 C.F.R. Part 162.

E. <u>Breach of Terms and Conditions; Termination; Term</u>

1. *Breach of Terms and Conditions*. In the event that Business Associate becomes aware of a pattern or practice of Subcontractor that constitutes a material breach or violation of Subcontractor's obligations under this Subcontract, Business Associate will notify Subcontractor of such breach. Subcontractor shall promptly cure the breach. If Subcontractor fails to expeditiously cure the breach, Business Associate, if feasible, may terminate the Underlying Agreement and this Subcontract. If Subcontractor does not cure the breach and termination is not feasible, Business Associate may report the breach to HHS. Subcontractor may take the same actions and afford Business Associate the same cure opportunities with respect to any pattern or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligations under this Subcontract of which Subcontractor has knowledge.

2. In the event of a default or breach by Subcontractor as set forth in <u>Section E(1)</u> of this Subcontract, Business Associate shall have available to it any legal or equitable right or remedy to which Business Associate is entitled, including but not limited to injunctive relief.

3. If the Underlying Agreement(s) is terminated by either party, Subcontractor shall return or destroy all PHI as specified in <u>Section C(12)</u> of this Agreement.

4. *Term*. This Subcontract shall be effective as of the date set forth above. This Subcontract shall terminate when all of the PHI provided by Business Associate to Subcontractor, or created or received by Subcontractor on behalf of Business Associate, pursuant this Subcontract, is destroyed or returned to Business Associate, or, if it is infeasible to return or destroy PHI, Subcontractor has taken adequate steps to ensure that protections are extended to such information in accordance with the termination provisions in <u>Section C(12)</u> of this Subcontract.

F.   Amendment. Business Associate may amend this Subcontract if it determines in good faith that such amendment is necessary or required to ensure consistency with amendments and changes in applicable federal and state laws, including regulations promulgated pursuant to HIPAA and the HITECH Act. Business Associate shall provide notice to Subcontractor of such amendment.

G.   General Provisions

1.   *Indemnification.* Notwithstanding anything to the contrary in the Underlying Agreement(s), at Subcontractor's expense and described herein, Subcontractor agrees to indemnify, defend and hold harmless the Business Associate and its employees, directors, officers, subcontractors, or agents (the "Indemnitees"), against all damages, losses, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) and all liability to third parties arising from or in connection with any breach of this Subcontract or of any warranty hereunder or from any negligence or wrongful acts or omissions, including but not limited to failure to perform its obligations under the Privacy Rule, the Security Rule, HIPAA or the HITECH Act, by Subcontractor or its employees, directors, officers, subcontractors, agents, or other members of Subcontractor's workforce. Subcontractor's obligation to indemnify Indemnitees shall survive the expiration or termination of this Subcontract and/or the Underlying Agreement(s) for any reason.

2.   *No Waiver.* A failure of any party to enforce at any time any term, provision or condition of this Subcontract, or to exercise any right or option herein, shall in no way operate as a waiver thereof, nor shall any single or partial exercise preclude any other right or option herein. In no way whatsoever shall a waiver of any term, provision or condition of this Agreement be valid unless in writing, signed by the waiving party and only to the extend set forth in such writing.

3.   *Relationship to Underlying Agreement(s) Provisions.* In the event that a provision of this Subcontract is contrary to a provision of the Underlying Agreement(s), the provision of this Subcontract shall control. Otherwise, this Subcontract shall be construed under and in accordance with, the terms of the Underlying Agreement(s), and shall be considered an amendment of and supplement to such Underlying Agreement(s).

4.   *Binding Effect.* This Subcontract shall be binding upon and shall inure to the benefit of the parties, and any successor to the operations and business of the parties whether by operation of law or otherwise, including the parties heirs, legal representatives, successors, and permitted assigns. The preceding sentence shall not affect any restriction on assignment set forth elsewhere in the Underlying Agreement(s).

5.   *Notices.* Except as provided in Section G(6) of this Subcontract, all notices given pursuant to this Subcontract shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, postage pre-paid, addressed to the party for whom it is intended at its or his address as first set forth below. Notice shall be sent to the address specified in the Underlying Agreement(s).

6.   *E-Mail Notices.* Notices, requests, instructions or other communication between Business Associate and Subcontractor under Sections C(8), C(9), C(10), C(11), C(13), C(14), E(1), or F of this Subcontract may be made by electronic mail, provided that the Underlying Agreement(s) contains an e-mail address for the purpose of communication with the appropriate party.

7. *Severability.* If any provision of this Subcontract is or becomes unenforceable, the remainder of this Subcontract shall nevertheless remain binding to the fullest extent possible, taking into consideration the purposes and spirit of this Subcontract.

8. *Survival.* Any provision of this Subcontract, which by its terms is intended to survive the termination or expiration of the Underlying Agreement(s), including but not limited to C(12) of this Subcontract, shall so survive.

9. *No Third Party Rights.* This Subcontract is intended only to regulate the relations among the parties and do not create or grant any other person any rights or benefits.

10. *Changes in Law.* References to the Privacy Rule, the Security Rule, HIPAA, and the HITECH Act mean such laws as they are now in effect or as they may be hereafter amended.

11. *Interpretation.* Any ambiguity in this Subcontract shall be interpreted and resolved to permit Business Associate to comply with the Privacy Rule, the Security Rule, HIPAA and/or the HITECH Act.

12. *Counterparts.* This Subcontract may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date of this Subcontract at such time as all of the signatories have signed a counterpart of this Subcontract.

13. *Applicable Law and Venue.* This Subcontract shall be governed by and construed in accordance with the laws of the state of Florida (without regards to principles of conflicts of laws) and HIPAA, the Privacy Rule, the Security Rule and the HITECH Act. The parties agree that all actions or proceedings arising in connection with this Subcontract shall be tried and litigated exclusively in the state or federal (if permitted by law and party elects to file an action in federal court) courts located in Miami-Dade County, Florida. This choice of venue is intended by the parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the parties with respect to, or arising out of this Subcontract in any jurisdiction other than that specific in this Section 13. Each party waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section 13.

IN WITNESS WHEREOF, the parties hereto have executed this Subcontract effective as of the date stated above.

BUPA WORLDWIDE CORPORATION

By: _____   By: _____

Print name: _____   Print name: _____

Title: _____   Title: _____

Dated: _____   Dated: _____

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