

HIPAA AGREEMENT

This Agreement is made by and between Sherrill D. Morgan and Associates, Inc. (hereinafter individually "SHERRILL MORGAN"), a Kentucky corporation, and City of Franklin (hereinafter individually "Plan Sponsor") effective March 22, 2011.

WHEREAS, SHERRILL MORGAN and Plan Sponsor acknowledge that SHERRILL MORGAN is a vendor offering services to Plan Sponsor whose group health plan is a Covered Entity; and

WHEREAS, SHERRILL MORGAN and Plan Sponsor desire to ensure that, with respect to the duties and obligations of the parties under the Agreement, the standards of privacy and security for each Individual utilizing or obtaining Services are adhered to pursuant to the Health Insurance Portability and Accountability Act of 1996 (referred to herein as "HIPAA") and all applicable state laws that preempt HIPAA.

WHEREAS, by executing this Agreement, the parties agree to abide by the terms and conditions of the Agreement.

In consideration of the promises and the mutual covenants and undertakings set forth in this Agreement, the parties have executed this Agreement through their duly authorized representatives as of the date noted above.

1. Definitions. All capitalized terms contained in this Agreement shall have the meaning ascribed to them in the Agreement unless otherwise defined in applicable law and/or regulation. In the event of any conflict between a definition as contained in the Agreement and a definition contained in 45 CFR Parts 160 and 164, the definition contained in 45 CFR Parts 160 and 164 shall govern.

1.1 **Business Associate:** "Business Associate" shall have the same meaning as the term "Business Associate" in 45 CFR 160.103 and shall mean SHERRILL MORGAN in this Agreement.

1.2 **Covered Entity:** "Covered Entity" shall have the same meaning as the term "Covered Entity" in 45 CFR 160.103 and shall mean the Plan Sponsor's self-funded group health plan.

1.3 **Designated Record Set:** "Designated Record Set" shall mean a group of records maintained by or for a Covered Entity that consists of: (a) the medical, claim, and billing records about an Individual maintained by or for a Covered Entity; (b) the enrollment, eligibility, payment, claim adjudication, case management and utilization review, and other medical management records maintained by or for a Covered Entity; or (c) any other records used by or for a Covered Entity to make decisions about an Individual. A "record" can be maintained in either paper or electronic form and means any item, collection or grouping of information that includes Protected Health Information and is maintained, collected, used or disseminated by or for a Covered Entity.

1.4 **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).

1.5 **Trading Partner:** "Trading Partner" shall mean an entity that assists a Business Associate in performing: (a) a function or activity involving the use or disclosure of individually identifiable health information, including utilization review, case management, medical management, quality assurance, and data analysis; or (b) any other function regulated by the HIPAA regulations.

1.6 **Privacy Rule:** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164.

1.7 **Protected Health Information:** "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 a Covered Entity.

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

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

1.10 Services: "Services" shall mean the services performed by SHERRILL MORGAN as described in the Agreement.

2. Business Associate Services: SHERRILL MORGAN provides Services for Plan Sponsor as applicable, that may involve the use and disclosure of Protected Health Information.

3. Trading Partner Services: SHERRILL MORGAN provides Services for Plan Sponsor or Plan Sponsor's third party administrator in support of SHERRILL MORGAN services that may involve the use and disclosure of Protected Health Information.

4. Obligations and Activities of SHERRILL MORGAN:

- (a) SHERRILL MORGAN shall not use or disclose PHI in any manner that would constitute a violation of 45 C.F.R. Parts 160 and 164 if used or disclosed by Plan Sponsor.
- (b) SHERRILL MORGAN shall not use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law.
- (c) SHERRILL MORGAN shall use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- (d) SHERRILL MORGAN shall mitigate, to the extent practicable, any harmful effect that is known to SHERRILL MORGAN of a use or disclosure of PHI by SHERRILL MORGAN in violation of the requirements of this Agreement.
- (e) SHERRILL MORGAN shall report to Plan Sponsor any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware or should have known, including accidental disclosures.
- (f) SHERRILL MORGAN shall disclose PHI only to those agents or subcontractors that may be assisting SHERRILL MORGAN in carrying out SHERRILL MORGAN's functions, unless otherwise expressly approved by Plan Sponsor. In the event SHERRILL MORGAN is permitted under this provision to disclose PHI to such agents or subcontractors, SHERRILL MORGAN shall require that any agent or subcontractor to whom it provides PHI created or received from or by SHERRILL MORGAN on behalf of Plan Sponsor or any Plan Sponsor, agrees to the same restrictions and conditions that apply through this Agreement to SHERRILL MORGAN with respect to such information.
- (g) SHERRILL MORGAN shall provide access, at the request of Plan Sponsor, to PHI in a Designated Record Set during SHERRILL MORGAN's normal business hours to Plan Sponsor or the applicable Plan Sponsor or, as either Plan Sponsor or the applicable Plan Sponsor may direct, to an Individual in order to meet the requirements under 45 CFR 164.524. In the event an Individual contacts SHERRILL MORGAN directly about accessing PHI, SHERRILL MORGAN shall notify Plan Sponsor of such request within three (3) business days following such request. If Plan Sponsor determines that access to the Individual's PHI can only be accommodated through SHERRILL MORGAN, SHERRILL MORGAN shall accommodate the request in accordance with the instruction provided by Plan Sponsor within fifteen (15) business days following SHERRILL MORGAN's receipt of such request. In the event SHERRILL MORGAN is asked to provide copies of an Individual's PHI, SHERRILL MORGAN shall provide such access by mailing a copy of the PHI in a Designated Record Set to Plan Sponsor.

- (h) SHERRILL MORGAN agrees to make any amendment(s) to PHI in a Designated Record Set that Plan Sponsor or the applicable Plan Sponsor directs or agrees to pursuant to 45 CFR 164.526 at the request of Plan Sponsor or the applicable Plan Sponsor, within fifteen (15) business days following SHERRILL MORGAN's receipt of such request. In the event an Individual contacts SHERRILL MORGAN directly about making amendments to PHI, SHERRILL MORGAN shall not make any amendments to the Individual's PHI but shall forward such request to Plan Sponsor within three (3) business days of such request.
- (i) SHERRILL MORGAN agrees to make internal practices, books, and records, including policies and procedures and PHI relating to the use and disclosure of PHI received from, or created or received by SHERRILL MORGAN on behalf of Plan Sponsor or the applicable Plan Sponsor, or at the request of the Secretary or designated by the Secretary, during SHERRILL MORGAN's normal business hours for purposes of the Secretary determining Plan Sponsor's or the applicable Plan Sponsor's compliance with the Privacy Rule.
- (j) SHERRILL MORGAN shall document such disclosures of PHI and information related to such disclosures as would be required for Plan Sponsor or each Plan Sponsor to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. SHERRILL MORGAN shall, at the request of Plan Sponsor, provide to Plan Sponsor or the applicable Plan Sponsor information collected in accordance with this provision of the Agreement, to permit Plan Sponsor or the applicable Plan Sponsor to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- (k) To protect the security of electronic PHI, SHERRILL MORGAN (and its agents and subcontractors) shall:
 - 1) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI that it creates, receives, maintains, or transmits on behalf of the Plan, as required by 45 CFR § 164.314, as amended from time to time;
 - 2) Ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect that information; and
 - 3) Report to the Covered Entity any material security incident of which it becomes aware.

5. Permitted Uses by SHERRILL MORGAN: SHERRILL MORGAN shall use PHI only to the extent necessary to perform the Services, and in a manner that such use would not violate the Privacy Rule if done by Plan Sponsor, provided, however, that:

- (a) SHERRILL MORGAN may use PHI in its possession for the proper management and administration of SHERRILL MORGAN's operations or to carry out the legal responsibilities of SHERRILL MORGAN.
- (b) SHERRILL MORGAN may disclose PHI in its possession for the proper management and administration of SHERRILL MORGAN, provided that disclosures are required by law or addressed in this Agreement.
- (c) SHERRILL MORGAN may use PHI to provide Data Aggregation services to Plan Sponsor as permitted by 42 CFR 164.504(e)(2)(I)(B).

6. Obligations of Plan Sponsor:

- (a) Plan Sponsor shall allow SHERRILL MORGAN access to PHI of Individuals utilizing the Services through Plan Sponsor.

- (b) Upon request, Plan Sponsor shall provide SHERRILL MORGAN with the Notice of Privacy Practices produced in accordance with 45 CFR 164.520, as well as any changes to such notice.
- (c) Plan Sponsor shall provide SHERRILL MORGAN with any changes in, or revocation of, permission by an Individual to use or disclose such Individual's PHI, if such changes affect SHERRILL MORGAN's permitted or required uses and disclosures.
- (d) Plan Sponsor shall notify SHERRILL MORGAN of any restriction to the use or disclosure of PHI that Plan Sponsor has agreed to in accordance with 45 CFR 164.522.
- (e) Plan Sponsor shall not request SHERRILL MORGAN to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Plan Sponsor, provided, however, that Plan Sponsor may request that SHERRILL MORGAN use or disclose PHI for data aggregation or management and the administrative activities of SHERRILL MORGAN.

7. Return of Protected Health Information: At termination of the Agreement, if feasible, SHERRILL MORGAN shall return or destroy all PHI created or received by SHERRILL MORGAN on behalf of Plan Sponsor, including PHI in the possession of subcontractors or agents of SHERRILL MORGAN. SHERRILL MORGAN shall not retain any copies of such information. In the event that SHERRILL MORGAN determines that returning or destroying the PHI is not feasible, SHERRILL MORGAN 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 of the information infeasible.

8. Termination:

- (a) This Agreement shall terminate when the parties mutually agree to termination, unless terminated earlier in accordance with paragraph (b) of this Section 8.
- (b) Notwithstanding any other provision of this Agreement, Plan Sponsor may immediately terminate this Agreement if SHERRILL MORGAN has materially violated its responsibilities regarding PHI under this Agreement and has failed to provide satisfactory assurances to Plan Sponsor within fifteen (15) business days of notice of such material violation that the violation has been cured and steps taken to prevent its recurrence.

9. Miscellaneous:

- (a) This Agreement may be executed in one or more counterparts. Each counterpart shall be deemed an original.
- (b) SHERRILL MORGAN agrees to indemnify, defend and hold Plan Sponsor and its officers, directors, and employees harmless from any alleged claim or penalty against Plan Sponsor or any Plan Sponsor arising from any allegation of uses and/or disclosures of Protected Health Information in violation of 45 C.F.R. Parts 160 and 164 arising from an alleged use or disclosure of Protected Health Information by SHERRILL MORGAN or its agents or subcontractors.
- (c) To the extent that any provision of this Agreement is in conflict with any law, regulation, rule or administrative policy of any government entity, this Agreement will have been deemed to have been amended in order to bring it into conformity with these provisions. In addition, the parties agree to amend this Agreement, as appropriate, to conform with any new or revised law or regulation to which a Covered Entity becomes subject, including, but not limited to, the Standards for Electronic Transactions, 45 CFR Parts 160 and 162 and the Health Insurance Reform: Security Standards 45 CFR Parts 160, 162 and 164.

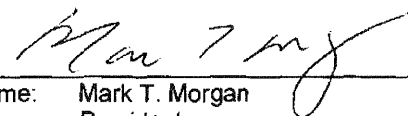
- (d) Except as stated in paragraph (c) of this Section 9, this Agreement may be amended only in a written agreement signed by the duly authorized officers of both parties.
- (e) This Agreement will be executed, delivered, integrated, construed and enforced in accordance with the laws of the State of Tennessee.
- (f) This Agreement may not be assigned by either party without the prior written consent of the other party. Except for the prohibition on assignment contained in the preceding sentence, this Agreement shall be binding upon and inure to the benefits of the heirs, successors, and assigns of the parties hereto.
- (g) The waiver by either party of a breach or a violation of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of same or other provisions hereof. No waiver shall be effective against any party hereto unless in writing signed by that party.
- (h) All notices, requests, demands, approvals, and other communications required or permitted by this Agreement shall be in writing and sent by either certified mail or by personal delivery. Such notice shall be deemed given on any date of delivery by the United States Postal Service. Any notice shall be sent to the addresses set forth in the Agreement.
- (i) If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected unless the invalid provision substantially impairs the benefits of the remaining provisions of this Agreement.
- (j) The responsibilities of this Agreement shall survive the termination of this Agreement.
- (k) SHERRILL MORGAN and Plan Sponsor each ratifies and confirms the terms and conditions of the Agreement herein.
- (l) In the event of a conflict between the terms of the Agreement and any other agreement entered into between the parties regarding the provisions of this Agreement, this Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first referenced above.

City of Franklin
"Plan Sponsor"

Sherrill D. Morgan and Associates, Inc.
"Business Associate"

By: _____
 Name:
 Title:
 Address:

By: 
 Name: Mark T. Morgan
 Title: President
 Address: 525 W. Fifth Street, Suite 310
 Covington, KY 41011

Brian Wilcox

From: Lisa Stamm [lisa@sherrillmorgan.com]
Sent: Friday, March 11, 2011 3:42 PM
To: Brian Wilcox
Cc: Mark Morgan
Subject: Signed Agreements
Attachments: Consulting Agreement 3.11.11.pdf; Business Associate Agreement 3.11.11.pdf

Hi, Brian--

The changes you proposed to the Consulting Agreement were acceptable to us. A signed copy is attached, as well as a signed Business Associate Agreement. If you need anything else, just let us know.

Thanks!

Lisa

Lisa Stamm, Esq.
Vice President, Consulting Services
SHERRILL MORGAN
525 W. Fifth Street, Suite 310
Covington, KY 41011
(859)291-6600
(859)291-7805 (fax)
e-mail: lisa@sherrillmorgan.com