

HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “Agreement”) is entered into as of July 31, 2015 (the “Effective Date”) by and between City of West Allis (“Customer”) with an address at 7525 West Greenfield Avenue, West Allis, WI 53214 and **Taxware, LLC** (“Taxware”), with an address at 200 Ballardvale Street, Building 1, 4th Floor, Wilmington, MA 01887.

Customer may be a “Covered Entity” or “Business Associate” as those terms are defined by the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as amended and supplemented by Subtitle D of the Health Information Technology for Economic and Clinical Health Act and its existing and future implementing regulations as when each of those regulations is effective (collectively, “HIPAA”). The parties agree that this Agreement shall apply solely to circumstances in which (i) Customer acts as a Covered Entity or a Business Associate and (ii) Taxware receives PHI (as defined below) from, or creates, receives, maintains or transmits PHI on behalf of, Customer in connection with Taxware’s performance or delivery of the functions, activities or services for reporting under the Patient Protection and Affordable Care Act (collectively, the “Covered Services”) performed by Taxware under an executed agreement between Taxware and Customer (the “Underlying Agreement”). This Agreement shall not apply to, or create any rights for, or impose any other obligations on, a party in connection with, any services or functions performed by Taxware other than the Covered Services performed pursuant to the Underlying Agreement. Any reference in this Agreement to a section of HIPAA shall refer to that section as in effect and as amended. This Agreement is incorporated into and is made a part of the Underlying Agreement.

1. **DEFINITIONS.** Unless otherwise defined in this Agreement, capitalized terms used in this Agreement shall have the same meanings as set forth in HIPAA, as applicable.

1.1 **Breach.** “Breach” shall have the meaning set forth in 45 C.F.R. § 164.402 (including all of its subsections) of the Breach Rule.

1.2 **Breach Rule.** “Breach Rule” shall mean the federal breach regulations, as amended from time to time, issued pursuant to HIPAA and codified at 45 C.F.R. Part 164 (Subpart D).

1.3 **Individual.** “Individual” shall have the same meaning set forth 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).

1.4 **Privacy Rule.** “Privacy Rule” shall mean the federal privacy regulations, as amended from time to time, issued pursuant to HIPAA and codified at 45 C.F.R. Parts 160 and 164 (Subparts A & E).

1.5 **Protected Health Information.** “Protected Health Information” (or “PHI”) shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103 and is limited to the Protected Health Information that Taxware receives from, or creates, receives, maintains and/or transmits on behalf of, Customer through the performance of the Covered Services.

1.6 **Security Rule.** “Security Rule” shall mean the federal security regulations, as amended from time to time, issued pursuant to HIPAA and codified at 45 C.F.R. Parts 160 and 164 (Subparts A & C).

1.7 **Secretary.** “Secretary” shall mean the Secretary of the Department of Health and Human Services or his/her designee.

2. GENERAL OBLIGATIONS OF TAXWARE.

2.1 Taxware agrees not to use or disclose PHI, other than as permitted or required by this Agreement, the Underlying Agreement, or as Required by Law. In the event Taxware carries out Customer's obligations under the Privacy Rule, Taxware shall comply with the requirements of the Privacy Rule that apply to Customer in the performance of those obligations. Taxware shall use or disclose PHI only as permitted or required by this Agreement or the Underlying Agreement, as Required by Law and to perform the Covered Services.

2.2 Subject to Taxware's limitation of liability set forth in the Underlying Agreement, Taxware agrees to mitigate, to the extent practicable, any harmful effect that is known to Taxware as a result of a use or disclosure of PHI by Taxware in violation of this Agreement or that would otherwise cause a Breach of Unsecured PHI.

2.3 Taxware shall report to Customer any use or disclosure of PHI not provided for by this Agreement of which Taxware becomes aware. Taxware also agrees to notify Customer of any Breach of Unsecured PHI of which Taxware becomes aware within thirty (30) calendar days after Taxware's discovery and in accordance with the Breach Rule. Such notice shall include, to the extent known by Taxware, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Taxware to have been accessed, acquired, or disclosed in connection with such Breach. In addition, Taxware shall provide Customer with all other information required by the Breach Rule.

2.4 Taxware shall report to Customer any successful security incident of which Taxware becomes aware. For the purposes of this Agreement, a "successful security incident" is the successful unauthorized access, use, disclosure, modification or destruction of PHI or interference with system operations in an information system.

2.5 Taxware agrees, in accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to require that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Taxware agree to, in all material aspects, no less restrictive conditions and restrictions than those that apply to Taxware under this Agreement with respect to such PHI, including the requirement to protect electronic PHI in accordance with the applicable requirements of the Security Rule.

2.6 To the extent that Taxware maintains PHI in a Designated Record Set, Taxware agrees to provide Customer with access to that PHI in accordance with 45 C.F.R. § 164.524.

2.7 To the extent that Taxware maintains PHI in a Designated Record Set, Taxware agrees to make available to Customer that PHI for Customer to amend in accordance with 45 C.F.R. § 164.526.

2.8 Taxware agrees to document, and make available to Customer, information necessary for Customer to make an accounting of disclosures of PHI by Taxware about an Individual, in accordance with 45 C.F.R. § 164.528 and, as of the date on which compliance is required, 42 U.S.C. § 17935(c).

2.9 Taxware shall use appropriate safeguards, and comply with the applicable requirements of the Security Rule with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for in this Agreement.

2.10 Taxware shall make its internal practices, books and records relating to the use and disclosure of PHI under this Agreement available to the Secretary in a time and manner agreed upon with Customer or designated by the Secretary for purposes of the Secretary determining Customer and Taxware's compliance with the Privacy Rule.

2.11 To the extent permitted by applicable law, Taxware shall upon receipt of a subpoena requesting PHI, inform Customer of such subpoena and afford Customer with an opportunity to move to quash such subpoena before disclosing such PHI.

3. **PERMITTED USES AND DISCLOSURES BY TAXWARE.**

3.1 Taxware may use and disclose PHI as necessary to perform the Covered Services and to exercise its rights and carry out its obligations under this Agreement and the Underlying Agreement. Taxware may use or disclose PHI as Required by Law.

3.2 Taxware may use PHI, if necessary, for the proper management and administration of Taxware or to carry out the legal responsibilities of Taxware. Taxware may disclose PHI for the proper management and administration of Taxware or to carry out the legal responsibilities of Taxware if Taxware obtains reasonable assurances from the person to whom the PHI is disclosed that it will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to such person, and the person agrees to notify Taxware of any instances in which it is aware the confidentiality of the PHI has been breached.

3.3 If requested by Customer in writing, Taxware may use PHI to provide Data Aggregation services to Customer as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

3.4 Taxware may de-identify PHI in accordance with 45 C.F.R. § 164.514(b). Information de-identified in accordance with this section shall not be PHI.

3.5 Taxware may use and discloses PHI to report violations of law to appropriate federal and state authorities consistent with 45 C.F.R. § 164.502(j)(1).

4. **OBLIGATIONS OF CUSTOMER.**

4.1 Customer shall:

(a) identify all information provided or otherwise made available by Customer to Taxware that is PHI;

(b) not agree to any restriction on the use or disclosure of PHI to which Customer is not required to agree to pursuant to 45 C.F.R. § 164.522(a) to the extent that such restriction may affect Taxware's use or disclosure of PHI under this Agreement;

(c) notify Taxware of any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such change or revocation may affect Taxware's permitted or required uses and disclosures of PHI under this Agreement;

(d) obtain all necessary consents and authorization from Individuals necessary for Taxware to use and disclose PHI as contemplated in this Agreement and the Underlying Agreement;

(e) comply with all applicable requirements and obligations set forth in HIPAA;

(f) implement and maintain administrative, physical and technical safeguards to maintain and ensure the confidentiality and security of any PHI; and

(g) maintain a complete and accurate Designated Record Set for each Individual for whom Customer has received, collected, stored, maintained or disclosed PHI as necessary for Customer to comply with 45 C.F.R. §§ 164.524 and 164.526.

4.2 Customer shall not request Taxware to use or disclose PHI in any manner that would not be permissible under the Privacy and Security Rule if done by Customer.

5. **TERM AND TERMINATION.**

5.1 This Agreement shall be in effect as of the Effective Date and shall terminate upon the earlier of (i) termination of the Underlying Agreement; or (ii) termination of this Agreement as provided for by Section 5.2 below.

5.2 In the event of either party's material breach of this Agreement, the non-breaching party may terminate this Agreement upon thirty (30) days prior written notice to the breaching party in the event the breaching party does not cure such breach within such thirty (30) day period. In the event the breaching party cures such breach after the thirty (30) day period and the non-breaching party has not terminated this Agreement, the right to terminate shall be relinquished. In the event that the cure of a breach is not reasonably possible, the non-breaching party may immediately terminate this Agreement.

5.3 Except as provided in Section 5.4, upon termination of this Agreement for any reason Taxware shall return to Customer or destroy, all PHI received from Customer, or created, maintained, or received by Taxware on behalf of Customer, that Taxware still maintains at the time of the termination.

5.4 In the event that Taxware determines that return or destruction of PHI is not feasible, Taxware shall: (i) extend the protections of this Agreement to such PHI; and (ii) limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Taxware maintains such PHI.

6. **MISCELLANEOUS.**

6.1 The parties agree to, as necessary, take such action to amend this Agreement to comply with the requirements of HIPAA or any other applicable law.

6.2 Any notice required or permitted under this Agreement shall be provided in writing:

to Taxware at:

Taxware, LLC
Attn: General Counsel
200 Ballardvale Street, Building 1, 4th Floor
Wilmington, MA 01887

to Customer at:

City of West Allis
Attn: General Counsel
7525 West Greenfield Avenue
West Allis, WI 53214

Notices will be deemed to have been received upon actual receipt, one (1) business day after being sent by overnight courier services or facsimile, or three (3) business days after mailing by first-class mail, whichever occurs first.

6.3 Except to the extent preempted by federal law, this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

6.4 This Agreement and the Underlying Agreement constitute the entire agreement between the parties related to the subject matter. This Agreement supersedes all prior negotiations, discussions, representations, or proposals, whether oral or written. This Agreement may not be modified unless done so in writing and signed by a duly authorized representative of both parties. If any provision of this Agreement is found to be invalid, the remaining provisions shall remain in effect. In the event of a conflict between this Agreement and the Underlying Agreement, this Agreement shall control with respect to that conflict.

6.5 This Agreement shall be binding on the successors and assigns of Customer and Taxware.

6.6 Nothing in this Agreement is intended, nor shall be deemed, to confer any benefits on any third party.

6.7 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one original Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CUSTOMER

Taxware, LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____