

HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement and is made between BEST Life and Health Insurance Company (“BEST Life”) and _____ (“Business Associate”).

RECITALS

WHEREAS, the U.S. Department of Health and Human Services (“HHS”) has issued final regulations, pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), governing the privacy of individually identifiable health information obtained, created or maintained by certain entities, including health plans (the “HIPAA Privacy Rule”); and

WHEREAS, the HIPAA Privacy Rule requires that BEST Life enter into this Agreement with Business Associate in order to protect the privacy of individually identifiable health information maintained by BEST Life (“Protected Health Information”, or “PHI”); and

WHEREAS, Business Associate and its employees, affiliates, agents or representatives may access paper and/or electronic records containing PHI in carrying out their duties to BEST Life; and

WHEREAS, BEST Life and Business Associate have or may have a prior business relationship under which the Business Associate performs or assists BEST Life in the performance of a function or activity involving the use and/or disclosure of PHI (“Underlying Agreement”); and

WHEREAS, BEST Life and Business Associate wish to supplement the “Underlying Agreement” if any, or if none, to implement this Agreement for the purposes of complying with the HIPAA Privacy Rule; and

WHEREAS, Business Associate and BEST Life intend to protect the privacy and provide for the security of Protected Health Information disclosed to or by BEST Life in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws; and

WHEREAS, as part of the HIPAA Regulations, the Standards for Privacy of Individually Identifiable Health Information codified at 45 CFR Parts 160 and 164 requires the parties to enter into a contract containing specific requirements prior to the disclosure of Protected Health Information, as set forth in, but not limited to, Title 45, Sections 164.502(e) and 164.504(e) of the Code of Federal Regulations (“CFR”) and contained in this Agreement.

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

1. Definitions.

a. Specific Definitions.

1. "Covered Entity" shall mean BEST Life. The terms Covered Entity and BEST Life may be used interchangeably in this Agreement.
2. "Business Associate" shall mean the party who performs or assists BEST Life in the performance of a function or activity involving the use or disclosure of PHI or one who provides legal, actuarial, accounting, consulting, management, administrative and other services for BEST Life.
3. "Data Aggregation" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.
4. "Designated Record Set" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.
5. "Health Care Operations" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR 164.501.
6. "Privacy Rule" shall mean the standard for Privacy of Individually Identifiable Health Information codified at 45 CFR Parts 160 and 164.
7. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, in 45 CFR Section 164.501, limited to the PHI provided by the Covered Entity to Business Associate or created or received by Business Associate on Covered Entity's behalf.

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

2. Obligations of Business Associate.

a. Permitted Uses. Business Associate shall not use or further disclose PHI except for the purpose of performing Business Associate's functions or activities on behalf of BEST Life or as required by law. Further, Business Associate shall not use PHI in any manner that would constitute a violation of the Privacy Rule if so used by Covered Entity, except that Business Associate may (i) use PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business

Associate, and (ii) provide Data Aggregation services relating to the health care operations of BEST Life if such services are otherwise provided by Business Associate to BEST Life.

b. Permitted Disclosures. Business Associate shall not disclose PHI in any manner that would constitute a violation of the Privacy Rule if disclosed by Covered Entity, except that Business Associate may disclose PHI in a manner permitted pursuant to the functions or activities it has agreed to provide to or on behalf of BEST Life, for the proper management and administration of Business Associate; and as required by law. To the extent that Business Associate discloses PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from such third party that such PHI will be held confidential as provided by this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) an agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the PHI, to the extent it has obtained knowledge of such breach.

c. Appropriate Safeguards. Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of PHI other than as permitted by this Agreement. Business Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities.

d. Reporting of Improper Use or Disclosure. Business Associate shall report to BEST Life in writing any use or disclosure of PHI not permitted by this Agreement within five (5) days of becoming aware of such use or disclosure.

e. Business Associate's Agents. Business Associate shall ensure that any agents, including subcontractors, to whom it provides PHI, agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation.

f. Access to Protected Information. Business Associate shall make PHI maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to BEST Life for inspection and copying within ten (10) days of a request by BEST Life to enable BEST Life to fulfill its obligations under the Privacy Rule, including, but not limited to 45 CFR Section 164.524.

g. Amendment of PHI. Within ten (10) days of receipt of a request from BEST Life for an amendment of PHI or a record about an individual contained in a Designated Record Set, Business Associate or its agents or subcontractors shall make such PHI available to BEST Life for amendment and incorporate any such amendment to enable BEST Life to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.526. If any individual requests an amendment of PHI directly from Business Associate or its agents or subcontractors, Business Associate shall notify BEST Life in writing

within five (5) days of the request. Any denial of amendment of PHI maintained by Business Associate or its agents or subcontractors shall be the responsibility of BEST Life.

h. Accounting Rights. Within ten (10) days of notice by BEST Life of a request for an accounting of disclosures of PHI, Business Associate and its agents or subcontractors shall make available to BEST Life the information required to provide an accounting of disclosures to enable BEST Life to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.528. As set forth in, and as limited by, 45 CFR section 164.528, Business Associate shall not be required to provide an accounting to BEST Life of disclosures: (i) to carry out treatment, payment or health care operations, as set forth in 45 CFR Section 164.502; (ii) to individuals of PHI about them as set forth in 45 CFR 164.502; (iii) to persons involved in the individual's care or other notification purposes as set forth in 45 CFR Section 164.510; (iv) for national security or intelligence purposes as set forth in 45 CFR Section 164.512(k)(2); or (v) to correctional institutions or law enforcement officials as set forth in 45 CFR Section 164.512(k)(5). Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request, but not before the compliance date of the Privacy Rule. At a minimum, such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis of the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to BEST Life in writing. It shall be BEST Life's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any PHI except as set forth in Sections 2(b) of this Agreement.

i. Governmental Access to Records. Within ten (10) days of receipt of a request Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BEST Life's compliance with the Privacy Rule. Business Associate shall provide to BEST Life a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.

j. Minimum Necessary. Business Associate (and its agents and subcontractors) shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure.

k. Data Ownership. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.

l. Retention of PHI. Notwithstanding Section 4(e) of this Agreement, Business Associate and its subcontractors or agents shall retain all PHI throughout the term of this Agreement and shall continue to maintain the information required under Section 2(h) of this Agreement for a period of six (6) years after termination of this Agreement.

m. Notification of Breach. During the term of this Agreement, Business Associate shall notify BEST Life within five (5) days of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

n. Audits, Inspections and Enforcement. Within ten (10) days of a written request by BEST Life, Business Associate and its agents or subcontractors shall allow BEST Life to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Health Information pursuant to this Agreement for the purpose of determining whether Business Associate has complied with this Agreement; provided, however, that (i) Business Associate and BEST Life shall mutually agree in advance upon the scope, timing and location of such an inspection; (ii) BEST Life shall protect the confidentiality of all confidential and proprietary information of Business Associate to which BEST Life has access during the course of such inspection; and (iii) BEST Life shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate. The fact that BEST Life inspects, or fails, to inspect, or has the right to inspect, Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with this

Agreement, nor does BEST Life's (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of BEST Life's enforcement rights under this Agreement.

3. Obligations of BEST Life.

a. BEST Life shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Business Associate pursuant to this Agreement, in accordance with the requirements of the Privacy Rule, until such PHI is received by Business Associate.

b. BEST Life shall notify Business Associate of any limitation(s) in its notice of privacy practices of BEST Life in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

c. BEST Life shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

d. BEST Life shall notify Business Associate of any restriction to the use or disclosure of PHI that BEST Life 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 PHI.

4. Term and Termination.

a. Term. The Term of this Agreement shall be effective as of April 14, 2003, and shall terminate when all of the PHI provided by BEST Life to Business Associate, or created or received by Business Associate on behalf of BEST Life, is destroyed or returned to BEST Life, or, if it is not feasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provision in this section.

b. Material Breach. As provided for under 45 C.F.R. §164.504(e)(2)(iii), BEST Life may immediately terminate this Agreement, any Underlying Agreement and any related agreements if BEST Life makes the determination that the Business Associate has breached a material term of this Agreement. Alternatively, and in the sole discretion of BEST Life, BEST Life may choose to provide Business Associate with written notice of the existence of the breach and provide Business Associate with thirty (30) calendar days to cure said breach upon mutually agreeable terms. In the event that mutually agreeable terms cannot be reached within this thirty (30) day period, Business Associate shall cure said breach to the satisfaction of BEST Life within an additional fifteen (15) days.

Failure by Business Associate to cure said breach or violation in the manner set forth above shall be grounds for immediate termination of any Underlying Agreement by BEST Life. If termination is not feasible, BEST Life has the right to report the problem to the Secretary of the U.S. Department of Health and Human Services.

c. Termination by the Business Associate. If Business Associate determines that BEST Life has breached a material term of this Agreement, then the Business Associate shall provide BEST Life with written notice of the existence of the breach and shall provide BEST Life with thirty (30) calendar days to cure said breach upon mutually agreeable terms. In the event that mutually agreeable terms cannot be reached within this thirty (30) day period, BEST Life shall cure said breach to the satisfaction of the Business Associate within an additional fifteen (15) days. Failure by BEST Life to cure said breach or violation in the manner set forth above shall be grounds for immediate termination of this and any Underlying Agreement by the Business Associate.

d. Judicial or Administrative Proceedings. Either party may terminate this and any Underlying Agreement, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the other party has violated any requirement of HIPAA, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

e. Effect of Termination. Upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall continue to extend the protections of Sections 2(a), 2(b), 2 (c) and 2 (e) of this Agreement to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI not

feasible. If Business Associate elects to destroy the PHI, Business Associate shall certify in writing to BEST Life that such PHI has been destroyed.

5. Disclaimer. BEST Life makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

6. Certifications. To the extent BEST Life determines that such examination is necessary to comply with BEST Life's legal obligations pursuant to HIPAA relating to certification of its security practices, BEST Life or its authorized agents or contractors, may, at BEST Life's expense, examine Business Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to BEST Life the extent to which Business Associate's security safeguards comply with HIPAA, the HIPAA Regulations or this Agreement.

7. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the BEST Life requirements herein and the requirements of HIPAA, the Privacy Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that BEST Life must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all PHI. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Agreement embodying written assurances consistent with the BEST Life requirements herein and the requirements of HIPAA, the Privacy Rule or other applicable laws. BEST Life may terminate this and any Underlying Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend this Agreement when requested by BEST Life pursuant to this Section or (ii) Business Associate does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI that BEST Life, in its sole discretion, deems sufficient to satisfy the BEST Life requirements herein and the requirements of HIPAA and the Privacy Rule.

8. Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its services as a Business Associate to BEST Life, available to BEST Life, at no cost to BEST Life, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against BEST Life, its directors, officers or employers based upon a claimed violation of HIPAA, the Privacy Rule or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is a named adverse party.

9. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than BEST Life, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

10. Effect on any Underlying Agreement. Except as specifically required to implement the purposes of this Agreement, all terms of any Underlying Agreement shall remain in force and effect.

11. Indemnification. In addition to any indemnification obligations which may be part of any Underlying Agreement, the Business Associate hereby indemnifies and agrees to hold BEST Life harmless against any and all claims, costs or damage, including Civil Monetary Penalties, arising from a breach by the Business Associate of its obligations in connection with this Agreement or the HIPAA Privacy Regulations.

12. Interpretation. The provisions of this Agreement shall prevail over any provisions in any Underlying Agreement that may conflict or appear inconsistent with any provision in this Agreement. This Agreement and any Underlying Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA and the Privacy Rule. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the Privacy Rule.

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

BEST Life and Health Insurance Company

By: _____

By: _____

Name: _____
(Print Name)

Name: Paul Peatross
(Print Name)

Title: _____

Title: Privacy Officer

Date: _____

Date: _____