WHATCOM COUNTY
CONTRACT NO.
201801022

INTERLOCAL AGREEMENT FOR FIRST RESPONSE EMERGENCY MEDICAL SERVICES

THIS INTERLOCAL AGREEMENT (the "Agreement") by and between WHATCOM COUNTY (the "County") and
WHATCOM COUNTY FIRE PROTECTION DISTRICT NO. 1, a Washington municipal corporation (the "Agency") and
WHATCOM COUNTY FIRE PROTECTION DISTRICT NO 4, a Washington municipal corporation (the "Agency") and
WHATCOM COUNTY FIRE PROTECTION DISTRICT NO. 5, a Washington municipal corporation (the "Agency") and
WHATCOM COUNTY FIRE PROTECTION DISTRICT NO. 7, a Washington municipal corporation (the "Agency") and
WHATCOM COUNTY FIRE PROTECTION DISTRICT NO. 8, a Washington municipal corporation (the "Agency") and
WHATCOM COUNTY FIRE PROTECTION DISTRICT NO. 11, a Washington municipal corporation (the "Agency") and
WHATCOM COUNTY FIRE PROTECTION DISTRICT NO. 14, a Washington municipal corporation (the "Agency") and
WHATCOM COUNTY FIRE PROTECTION DISTRICT NO. 16, a Washington municipal corporation (the "Agency") and
WHATCOM COUNTY FIRE PROTECTION DISTRICT NO. 17, a Washington municipal corporation (the "Agency") and
WHATCOM COUNTY FIRE PROTECTION DISTRICT NO. 18, a Washington municipal corporation (the "Agency") and
WHATCOM COUNTY FIRE PROTECTION DISTRICT NO. 19, a Washington municipal corporation (the "Agency") and
WHATCOM COUNTY FIRE PROTECTION DISTRICT NO. 21, a Washington municipal corporation (the "Agency") and
CITY OF BELLINGHAM, a Washington municipal corporation (the "Agency") and
CITY OF LYNDEN, a Washington municipal corporation (the "Agency") and
SOUTH WHATCOM FIRE AUTHORITY, a Washington municipal corporation (the "Agency") is for the provision of first response emergency medical services. Together, the County and the Agencies are the only parties to this Agreement and may be referred to collectively

RECITALS

This Agreement is based on the following relevant facts and circumstances:

A. The parties are signatories to an Emergency Medical Services Agreement signed in 1984 (the "Original Agreement").

B. It is deemed to be in the best interests of the citizens of Whatcom County to have available fast and efficient emergency medical services; and

C. Within areas serviced by Whatcom County fire agencies, it is often most efficient for the first response of such services to be provided by the local fire agency; and

D. The Original Agreement has become outdated, and the parties wish to replace

the Original Agreement with a new agreement that more accurately reflects their respective roles and responsibilities.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. **Services.** The Agencies agree to provide First Response Emergency Medical Services (the "Services") within the boundaries of the Agency on behalf of Whatcom County, as dispatched through the Prospect Fire Dispatch Center (the "Dispatch Center"). The term "First Response Emergency Medical Services" means such medical treatment and care which may be rendered to persons injured, sick or incapacitated in order to reduce the risk of loss of life or aggravation of illness or injury, prior to the arrival of Advanced Life Support ("ALS"). The term Services expressly include Basic Life Support ("BLS") transports, as needed for patient care. The Agencies agree to use the designated County-wide records management system ("RMS") for the collection of County-wide EMS data and the transmittal of patient care reports to the hospital.

2. **Consideration.** During the term of this Agreement, and as consideration for the Services provided by the Agencies, the County shall provide the Agencies with the following:

2.1 The County will assume and make payment, using EMS levy revenue, for the cost of all of the EMS calls transmitted from the Dispatch Center during their normal quarterly billing process. The Dispatch Center will bill the County directly for this payment. For the cities of Lynden and Bellingham, which were not covered by the Original Agreement, the County shall make a retroactive payment to cover such costs incurred by such cities starting January 1, 2017.

2.2 As agreed to in the Original Agreement, the County will continue to make payment, using County revenue other than the EMS levy revenue, for the cost of the Fire dispatch calls transmitted from the dispatch Center during their normal quarterly billing process, except for the cities of Lynden and Bellingham, which were not covered by the Original Agreement.

2.3 If at such time during the term of this agreement, the Whatcom County EMS Executive Oversight Board and the Whatcom County Council, agree to pay for all of the Fire dispatch calls transmitted from the Dispatch Center, using EMS levy revenue, such payment will include the cost of all of the Fire dispatch calls, including the parties of the Original Agreement and the cities of Lynden and Bellingham.

2.4 The County will provide, at its sole expense by use of EMS levy funds, a County-wide RMS for the collection of County-wide Fire/EMS data and the transmittal of patient care reports to the hospital. The RMS software shall be from a vendor that is jointly agreed upon by the Whatcom County Fire Chief's Association, the EMS Technical Advisory Board, and the County. The designated RMS shall be made available for use by the Agencies as determined in the RMS vendor agreement.

3. **Term of Agreement.** Notwithstanding the date of signatures, the term of this Agreement shall commence on January 1, 2018 and shall continue through December 31, 2022. The Parties covenant to meet no later than June 1, 2022 to discuss and negotiate in good faith toward a renewal of this Agreement or a successor agreement that provides for the services and funding for services contemplated by this Agreement.

3.1 The Parties may mutually agree to re-open the contract for renegotiation of any of its terms based on changed circumstances.

3.2 Concurrently with the commencement of the term of this Agreement, the Original Agreement shall be terminated; provided, however, that the County's obligation to pay for dispatch calls prior to such termination shall survive the termination of the Original Agreement.

4. **Assignment/Subcontracting.** The Agencies shall not assign or subcontract any portion of the Services without obtaining the prior written approval of the County. Notwithstanding the foregoing, the County recognizes that fire districts throughout the state are actively engaging in regionalization efforts in order to improve efficiencies while reducing duplication and associated expenses in order to better serve their citizens. In recognition of this fact, the following regionalization efforts shall not be deemed an "assignment" or "subcontract" requiring prior approval by the County: (i) the Agency enters into an interlocal agreement with another Whatcom County fire district to provide EMS services to it or (ii) an Agency merges or creates a Regional Fire Protection Service Authority with another Whatcom County fire protection district.

5. **Relationship of the Parties.** The Agencies are not now, nor have ever been, an agent of the County. The parties do not intend to have an agency relationship arise from this Agreement. Rather, the parties intend that an independent contractor/county relationship will be created by this Agreement. The County is interested only in the results to be achieved. The implementation of, and control of, the Services shall lie solely with the Agencies. No agent, employee or representative of the district shall be deemed to be an agent, employee, or representative of the County. No agent, employee or representative of the Agencies shall be paid by the County or receive any of the employment benefits normally given to County employees by the County.

6. **Indemnification.** To the extent permitted by law, each party agrees to defend, indemnify and hold harmless the other party, its officers, officials, employees and volunteers from any and all claims, costs, including reasonable attorneys' and expert witness fees, losses and judgments arising out of the negligent and intentional acts or omissions of such party's officers, officials, employees and volunteers in connection with the performance of the Agreement. The provisions of this section shall survive the expiration or termination of the Agreement and the Restated ILA.

7. **Insurance.** The Agencies shall carry professional liability insurance for the duration of this Agreement in an amount not less than $1,000,000.00. Each Agency shall also carry a Commercial General Liability Insurance Policy in an amount not less than $1,000,000.00. Each Agency shall name the County as an additional insured on its CGL Policy, and each Agency's CGL policy shall be deemed primary and non-contributory. The County's insurance shall not serve as a source of contribution, except as excess to the coverage provided by the Agencies. An agency may maintain a program of self-insurance and excess coverage with and to the same effect as the commercial coverage described hereinabove as a means of meeting the requirements of this paragraph. None of the foregoing policies or programs shall be cancelled or amended on less than thirty (30) days' notice to the County.

8. **Compliance with RCW 39.34.030.** This Agreement does not create a separate legal or administrative entity and does not require a joint board. No real or personal property will be jointly acquired pursuant to this Agreement.

9. **HIPAA Compliance.** The parties of this agreement believe they qualify as a Covered Entity and Business Associate as defined within the Health Insurance Portability and Accountability Act and its accompanying regulations ("HIPAA"). In order to comply with the applicable provisions of HIPAA, the parties agree to the provisions of the HIPAA Business Associate Addendum attached hereto and incorporated herein as Exhibit A.

10. **Recording/Posting.** Pursuant to RCW 39.34.040, this Agreement shall be either recorded with the Whatcom County Auditor immediately after execution by all Jurisdictions hereto or posted on either party's website.

11. **No Third Party Beneficiaries.** This Agreement shall not be construed to benefit any third party or otherwise limit the application or protection of the "Public Duty Doctrine" to the Agencies or the County.

12. **Survivability.** All covenants, promises and performance which are not fully performed as of the date of termination shall survive termination as binding obligations.

13. **Notices.** All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

County:

Whatcom County
Attn: Jack Louws, County Executive
311 Grand Avenue, Suite 108
Bellingham, Washington 98225

Agencies:

Whatcom County Fire Protection District No. 1
Attn: Fire Chief
101 E. Main Street – P.O. Box 454
Everson, Washington 98247

Whatcom County Fire Protection District No. 4
Attn: Fire Chief
4142 Britton Loop Road
Bellingham, WA 98226

Whatcom County Fire Protection District No. 5
Attn: Fire Chief
2030 Benson Road
Point Roberts, Washington 98281

Whatcom County Fire Protection District No. 7
Attn: Fire Chief
2020 Washington Street – P.O. Box 1599
Ferndale, Washington 98248

Whatcom County Fire Protection District No. 8
Attn: Fire Chief
1800 Broadway
Bellingham, Washington 98225

Whatcom County Fire Protection District No. 11
Attn: Fire Chief
3809 Legoe Bay Road – P.O. Box 130
Lummi Island, Washington 98262

Whatcom County Fire Protection District No. 14
Attn: Fire Chief
143 Columbia Street – P.O. Box 482
Sumas, Washington 98295

Whatcom County Fire Protection District No. 16
Attn: Fire Chief
2036 Valley Highway – P.O. Box 37
Acme, Washington 98220

Whatcom County Fire Protection District No. 17
Attn: Fire Chief
4332 Sucia Drive
Ferndale, Washington 98248

Whatcom County Fire Protection District No. 18
Attn: Fire Chief
431 Cain Road
Sedro-Woolley, Washington 98284

Whatcom County Fire Protection District No. 19
Attn: Fire Chief
9953 Mt. Baker Hwy. – P.O. Box 5029
Glacier, Washington 98244

Whatcom County Fire Protection District No. 21
Attn: Fire Chief
4142 Britton Loop Road
Bellingham, Washington 98226

Bellingham Fire Department
Attn: Fire Chief
1800 Broadway
Bellingham, WA 98225

South Whatcom Fire Authority
Attn: Fire Chief
2050 Lake Whatcom Blvd.
Bellingham, Washington 98229

Lynden Fire Department
Attn: Fire Chief
215 4th Street
Lynden, Washington 98264

or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

13. **Further Cooperation.** The parties shall cooperate in good faith and execute such documents as necessary and take such further actions as reasonably necessary to effectuate the purposes and intent of this Agreement.

14. **Disputes.** Venue for any disputes concerning this Agreement shall lie exclusively in Skagit County Superior Court. Each party expressly waives the right to a jury trial.

15. **Waiver.** No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Any party hereto, by notice, and only by notice as provided herein may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

16. **Captions.** The captions of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement.

17. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

18. **Neutral Authorship.** Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of all parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

19. **Governing Law.** This Agreement, and the right of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington, and the parties agree that in any such action, venue shall lie exclusively in Skagit County, Washington.

20. **Entire Agreement.** The entire agreement between the parties hereto is contained in this Agreement, and this Agreement supersedes all of their previous understandings and

agreements, written and oral, with respect to this transaction. This Agreement may be amended only by written instrument executed by the parties subsequent to the date hereof.

DATED this 31st day of January, 2018.

WHATCOM COUNTY

Approved as to form:

Daniel L. Gibson 01/18/18
Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: _____
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this 31st day of January, 2018, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

Suzanne M. Mildner
NOTARY PUBLIC in and for the State of Washington, residing at Bellingham. My commission expires 12-31-18

SUZANNE M MILDNER
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
12-31-2018

WHATCOM COUNTY FIRE PROTECTION
DISTRICT NO. 1

ATTEST:

By: _____

APPROVED:

By: _____
Chief

By: _____
Commissioner

By: _____
Commissioner

By: _____
Commissioner

DATED this 25th day of January, 2018.

WHATCOM COUNTY FIRE PROTECTION
DISTRICT NO. 4

ATTEST:

By: _____

APPROVED:

By: _____
Chief

By: _____
Commissioner

By: _____
Commissioner

By: _____
Commissioner

DATED this 17th day of January, 2018.

WHATCOM COUNTY FIRE PROTECTION
DISTRICT NO. 5

ATTEST:

By: _____

APPROVED:

By: _____
Chief

By: _____
Commissioner

By: _____
Commissioner

By: _____
Commissioner

DATED this _____ day of _____, 2018.

WHATCOM COUNTY FIRE PROTECTION
DISTRICT NO. 7

ATTEST:

By: Patty Markel

APPROVED:

By: _____
Chief

By: _____
Commissioner

By: _____
Commissioner

By: _____
Commissioner

DATED this 14th day of December, 2017.

WHATCOM COUNTY FIRE PROTECTION
DISTRICT NO. 8

ATTEST:

By: _____

APPROVED:

By: _____
Chief

By: _____
Commissioner

By: _____
Commissioner

By: _____
Commissioner

By: _____
Commissioner

By: _____
Commissioner

DATED this 11th day of January, 2018.

WHATCOM COUNTY FIRE PROTECTION
DISTRICT NO. 11

ATTEST:

By: _____

APPROVED:

By: _____
Chief

By: _____
Commissioner

By: _____
Commissioner

By: _____
Commissioner

DATED this 9th day of Jan, 2018.

WHATCOM COUNTY FIRE PROTECTION
DISTRICT NO. 14

ATTEST:

By: _____

APPROVED:

By: _____
Chief

By: _____
Commissioner

By: _____
Commissioner

By: _____
Commissioner

DATED this 9 day of January, 2018.

WHATCOM COUNTY FIRE PROTECTION
DISTRICT NO. 16

ATTEST:

By: Candy Roberts

APPROVED:

By: _____
Chief

By: _____
Commissioner

By: _____
Commissioner

By: _____
Commissioner

DATED this 19th day of December, 2018.

WHATCOM COUNTY FIRE PROTECTION
DISTRICT NO. 17

ATTEST:

By: _____

APPROVED:

By: _____
Chief

By: _____
Commissioner

By: _____
Commissioner

By: _____
Commissioner

DATED this 11th day of JANUARY, 2018.

WHATCOM COUNTY FIRE PROTECTION
DISTRICT NO. 18

ATTEST:

By: _____

APPROVED:

By: _____
Chief

By: _____
Commissioner

By: _____
Commissioner

By: _____
Commissioner

DATED this 11th day of Jan, 2018.

WHATCOM COUNTY FIRE PROTECTION
DISTRICT NO. 19

ATTEST:

By: _____

APPROVED:

By: _____
Chief

By: _____
Commissioner

By: _____
Commissioner

By: _____
Commissioner

DATED this 14th day of February, 2018.

WHATCOM COUNTY FIRE PROTECTION
DISTRICT NO. 21

ATTEST:

By: _____

APPROVED:

By: _____
Chief

By: _____
Commissioner

By: _____
Commissioner

By: _____
Commissioner

DATED this 18th day of January, 2018.

CITY OF BELLINGHAM

Mayor 2/1/18

Attest:

Finance Director

Departmental Approval:

Approved as to form:

Office of the City Attorney

DATED this 2 day of February 2018.

LYNDEN FIRE DEPARTMENT

APPROVED AS TO FORM:

By: _____
City Attorney

APPROVED:

By: _____
Chief

By: _____
Mayor

DATED this 5 day of February, 2018.

ORIGINAL

SOUTH WHATCOM FIRE AUTHORITY

ATTEST:

By: _____

APPROVED:

By: David M Ralston
Chief

By: _____
Commissioner

By: J Wilson
Commissioner

By: _____
Commissioner

By: _____
Commissioner

By: _____
Commissioner

DATED this 14th day of December, 2017.

Exhibit A
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is made and entered into in duplicate originals this day by and between WHATCOM COUNTY (the "County) and

WHATCOM COUNTY FIRE PROTECTION DISTRICT NO. 1, a Washington municipal corporation (the "Agency") and

WHATCOM COUNTY FIRE PROTECTION DISTRICT NO. 4, a Washington municipal corporation (the "Agency") and

WHATCOM COUNTY FIRE PROTECTION DISTRICT NO. 5, a Washington municipal corporation (the "Agency") and

WHATCOM COUNTY FIRE PROTECTION DISTRICT NO. 7, a Washington municipal corporation (the "Agency") and

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WHATCOM COUNTY FIRE PROTECTION DISTRICT NO. 21, a Washington municipal corporation (the "Agency") and

CITY OF BELLINGHAM, a Washington municipal corporation (the "Agency") and

CITY OF LYNDEN, a Washington municipal corporation (the "Agency") and

SOUTH WHATCOM FIRE AUTHORITY, a Washington municipal corporation (the "Agency")

1. Definitions

1.1 HIPAA Terminology:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

1.2 Specific definitions:

(a) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the County.

(b) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the Agency.

(c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

2. Obligations and Activities of Business Associate

Business Associate agrees to:

(a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;

(b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;

(c) Report to Covered Entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;

(d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;

(e) Make available protected health information in a designated record set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;

(f) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;

(g) Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;

(h) To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and

(i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

3. Permitted Uses and Disclosures by Business Associate

(a) Business Associate may only use or disclose protected health information as necessary to perform its obligations under the Interlocal Agreement for EMS Administrative Services.

(b) Business Associate is authorized to use protected health information to de-identify the information in accordance with 45 CFR 164.514(a)-(c).

(c) Business Associate may use or disclose protected health information as required by law.

(d) Business Associate agrees to make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures.

(e) Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity except for the specific uses and disclosures set forth below.

(f) Business Associate may disclose protected health information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(g) Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity.

4. Termination

(a) Term. The Term of this Agreement shall be effective as of the effective date of the Interlocal Agreement For Ems Administrative Services to which this Agreement is attached and shall

terminate on the termination date of the Interlocal Agreement For Ems Administrative Services or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity; provided, however, that termination of this Agreement shall not affect the Interlocal Agreement For Ems Administrative Services except that the Parties shall meet and establish a new business associate agreement with appropriate provisions to correct the violation.

(c) Obligations of Business Associate Upon Termination..

Upon termination of this Agreement for any reason, Business Associate, with respect to protected health information received from Covered Entity, or created, maintained, or received by business associate on behalf of Covered Entity, shall:

Retain only that protected health information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining protected health information that the Business Associate still maintains in any form;

Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as Business Associate retains the protected health information;

Not use or disclose the protected health information retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out in Section 3 above which applied prior to termination; and

Return to Covered Entity or, if agreed to by Covered Entity, destroy the protected health information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

(d) Survival. The obligations of Business Associate under this Section 4 shall survive the termination of this Agreement.