

Exhibit E

Business Associate Agreement

BUSINESS ASSOCIATE AGREEMENT
BY AND BETWEEN
ACCESS HEALTH CONNECTICUT AND
Maximus Health Services, Inc. ("BUSINESS ASSOCIATE")

WHEREAS, The Connecticut Health Insurance Exchange dba Access Health Connecticut ("The Exchange") is a quasi public agency formed to implement certain provisions of the Patient Protection and Affordable Care Act, Pub.L. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub.L.111-152 (collectively "PPACA") and is charged with implementing Connecticut's exchange for individuals and small employers to be effective January 1, 2014; and

WHEREAS, in accordance with Public Act 11-53, the goals of the Exchange shall be to reduce the number of individuals without health insurance in the State of Connecticut and assist individuals and small employers in the procurement of health insurance by, among other services, offering easily comparable and understandable information about health insurance options; and

WHEREAS, the Exchange may receive protected health information from "covered entities," as defined under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") ; and

WHEREAS, the Exchange desires to disclose and Business Associate desires to receive protected health information from the Exchange in connection with the Exchange's above referenced purposes or otherwise in the performance of services on behalf of the Exchange; and

WHEREAS, this exchange of information necessitates Business Associate becoming a business associate of the Exchange as required under HIPAA; and

WHEREAS, for good and lawful consideration the Exchange and Business Associate enter into this Business Associate Agreement for the purpose of ensuring compliance with the requirements of HIPAA and its implementing regulations:

NOW THEREFORE, the parties mutually agree to the following terms and conditions.

ACCEPTANCES AND APPROVALS:

ACCESS HEALTH CONNECTICUT

MAXIMUS HEALTH SERVICES, INC.

BY: 
Kevin Counihan
CEO, Access Health Connecticut
DATE: 9/25/13

BY: 
NAME: Adam Polatnick
TITLE: Vice President
DATE: Assistant General Counsel
09/24/13

(a) Definitions

- (1) "Breach" shall have the same meaning as the term is defined in 45 C.F.R. § 164.402.
- (2) "Data Breach Notification Rule" shall mean the rules governing Notification in the Case of Breach of Unsecured Protected Health Information at 45 C.F.R. part 164, subpart D.
- (3) "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501.
- (4) "Electronic Health Record" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(5)).
- (5) "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 as defined in 45 C.F.R. § 164.502(g).
- (6) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- (7) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to information created or received by the Business Associate from or on behalf of the Exchange on behalf of one or more covered entities.
- (8) "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- (9) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- (10) "More stringent" shall have the same meaning as the term "more stringent" in 45 C.F.R. § 160.202.
- (11) "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.
- (12) "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.

(13) “Unsecured protected health information” shall have the same meaning as defined in 45 C.F.R. § 164.402.

(b) Obligations and Activities of Business Associates.

(1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Agreement or as Required by Law or as otherwise directed by the Exchange.

(2) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Agreement.

(3) Business Associate agrees to comply with the Security Rule and use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Exchange.

(4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate or its agents or subcontractors in violation of this Agreement or applicable law. Business Associate shall pay any costs associated with such harm, including, without limitation, costs of notifications related to a Breach, such as, letters to Individuals, print or broadcast media announcements, securing credit reporting or monitoring services, or obtaining identity theft insurance on behalf of such Individuals and related third parties. Business Associate will cooperate and ensure cooperation of its agents and subcontractors with the Exchange in the investigation and resolution of any Breach or any use or disclosure of PHI which violates the terms of this Agreement.

(5) Business Associate agrees to report to the [General Counsel] of the Exchange any use or disclosure of PHI not provided for by this Agreement or any Breach or Security Incident of which it becomes aware within twenty-four (24) hours of discovery.

(6) In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate, on behalf of the Exchange, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

- (7) Business Associate agrees to provide access, at the request of the Exchange, to PHI in a Designated Record Set, to the Exchange or, as directed by the Exchange, to an Individual within five (5) business days of receipt of such request from the Exchange in order to meet the requirements under 45 C.F.R. § 164.524.
- (8) Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Exchange directs or agrees to pursuant to 45 C.F.R. § 164.526 and take other measures as necessary to satisfy the Exchange's obligations under 45 C.F.R. § 164.526.
- (9) Business Associate 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, Business Associate on behalf of the Exchange, available to the Exchange or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary determining the Business Associate's and/or the Exchange's compliance with this Agreement and HIPAA and its implementing regulations.
- (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for the Exchange to respond to a request by a covered entity or an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- (11) Business Associate agrees to provide to the Exchange, within five (5) business days of request, information collected in accordance with subsection (h)(10) of this Agreement, to permit the Exchange to respond to a request by a covered entity or an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Business Associate agrees at the Exchange's direction to provide an accounting of disclosures of PHI directly to an Individual in accordance with 45 C.F.R. § 164.528.
- (12) Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule, including, without limitation, those obligations imposed on the Exchange under 45 C.F.R. § 155.260.
- (13) In the event that an Individual requests that the Business Associate
 - (A) restrict disclosures of PHI;
 - (B) provide an accounting of disclosures of the Individual's PHI; or

- (C) provide a copy of the Individual's PHI in an electronic health record

the Business Associate agrees to notify the Exchange, in writing, within two (2) business days of the request.

- (14) Business Associate agrees that it shall not, directly or indirectly, receive any remuneration in exchange for PHI of an Individual without

- (A) the written approval of the Exchange and

- (B) the valid authorization of the Individual, except for the purposes provided under 45 C.F.R. § 164.502(a)(5)(ii).

- (15) Obligations in the Event of a Breach.

- (A) The Business Associate agrees that, following the discovery of a breach of unsecured protected health information, it shall notify the Exchange of such breach in accordance with the requirements of 45 C.F.R. part 164, subpart D and this Agreement.

- (B) Such notification shall be provided by the Business Associate to the Exchange without unreasonable delay, and in no case later than twenty-four (24) hours after the breach is discovered by the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to 45 C.F.R. § 164.412. A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate. Within five (5) business days after such initial notification, Business Associate shall provide a follow-up notification with the identification and last known address, phone number and email address of each Individual (or the next of kin of the Individual if the Individual is deceased) whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.

- (C) The Business Associate agrees to include in the follow-up notification to the Exchange at least the following information:

- 1. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.

2. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
3. The steps the Business Associate recommends that Individuals take to protect themselves from potential harm resulting from the breach.
4. A detailed description of what the Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.
5. Whether a law enforcement official has advised either verbally or in writing the Business Associate that he or she has determined that notification or notice to Individuals or the posting required under 45 C.F.R. § 164.406 would impede a criminal investigation or cause damage to national security and; if so, include contact information for said official.

(D) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that Individuals informed by the Exchange of a breach by the Business Associate have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Exchange, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by Business Associate.

(E) Business Associate agrees that, in the event of a breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Exchange.

(c) Permitted Uses and Disclosure by Business Associate.

- (1) General Use and Disclosure Provisions Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, the Exchange as specified in this Agreement or as otherwise directed by the Exchange, provided that such use or disclosure would not violate the Privacy Rule if done by the Exchange or the minimum necessary policies and procedures of the Exchange.
- (2) Specific Use and Disclosure Provisions
 - (A) Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
 - (B) Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate complies with the provisions of Section (b)(6) of this Agreement.
 - (C) Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to the Exchange as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- (d) Permissible Requests by the Exchange. The Exchange shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Exchange, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Agreement.
- (e) Term and Termination.
 - (1) Term. The Term of this Agreement shall be effective as of the date this Agreement is effective and shall terminate when all of the PHI provided by the Exchange to Business Associate, or created or received by Business Associate on behalf of the Exchange, is destroyed or returned to the Exchange, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Agreement.
 - (2) Termination for Cause. Upon the Exchange's knowledge of a material breach by Business Associate of this Agreement, the Exchange shall either:

- (A) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by the Exchange; or
- (B) Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
- (C) If neither termination nor cure is feasible, the Exchange shall report the violation to the Secretary.

Business Associate agrees that any breach of this Agreement shall also constitute a breach of the Independent Contractor Agreement, dated _____, 2013, between the Parties, as it may be amended from time to time, or any other separate agreement between the Parties.

(3) Effect of Termination.

- (A) Except as provided in (e)(2) of this Agreement, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from the Exchange, or created or received by Business Associate on behalf of the Exchange. Business Associate shall also provide the information collected in accordance with section (b)(10) of this Agreement to the Exchange within ten business days of the notice of termination. This section shall further apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
- (B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to the Exchange notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.

(f) Miscellaneous Sections.

- (1) Regulatory References. A reference in this Agreement to a section in HIPPA or its implementing regulations means the section as in effect or as amended.
- (2) Amendment. 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, including, without limitation, those laws and regulations that relate to health insurance exchanges created under the PPACA. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, HITECH, the Privacy Rule, the Security Rule, the Data Breach Notification Rule, the PPACA, and other applicable laws relating to the security or confidentiality of PHI, including amending this Agreement from time to time as is necessary to comply with such applicable laws and regulations.
- (3) Survival. The respective rights and obligations of Business Associate shall survive the termination of this Agreement.
- (4) Construction. This Agreement shall be construed as broadly as necessary to implement and comply with HIPAA, HITECH, the Privacy Rule, the Security Rule and the Data Breach Notification Rule. Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies, and is consistent with, the such laws and regulations.
- (5) Disclaimer. The Exchange makes no warranty or representation that compliance with this Agreement will be adequate or satisfactory for Business Associate's own purposes. The Exchange shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees, contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the sections of this Agreement or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.
- (6) Indemnification. Without limiting the Exchange's other remedies for breach of this Agreement, the Business Associate shall indemnify, defend, and hold the Exchange and any covered entity whose information Business Associate processes hereunder, and their respective employees, officers, directors and agents, harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may

be imposed or assessed pursuant to HIPAA, as amended or the HITECH Act, including, without limitation, attorney's fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate or its agents, including its subcontractors, of any obligation of Business Associate under this Agreement or applicable laws, rules, and regulations.