

Business Associate Agreement

This Business Associate Agreement (“the Agreement”) is made and entered into this 7th day of March, 2014, by and between First Community Bank (also referred to as “Covered Entity”) and Clarke & Company Benefits (also referred to as “Business Associate”).

First Community Bank has entered into an agreement with Clarke & Company Benefits to provide benefits consulting representation and other related services regarding insured or self-insured health and welfare benefit plans. Where applicable, a Consulting Agreement is attached to this Business Associate Agreement and details the services provided by Clarke & Company Benefits. Where no Consulting Agreement is in place between the parties, Clarke & Company Benefits is performing services based on its role as Agent of Record for purposes of First Community Bank’s health and welfare benefit plans.

By the nature of its role, Clarke & Company Benefits acknowledges that it is a “Business Associate” of First Community Bank as that term is defined by the Health Insurance Portability and Accountability Act and its implementing regulations (45 C.F.R. Parts 160-164) (“HIPAA”). Accordingly, First Community Bank is a Covered Entity under HIPAA.

In consideration of the mutual covenants and conditions contained in this Agreement, the parties agree as follows:

- 1. Definitions.** Capitalized terms in this Agreement and not otherwise defined herein shall have the meanings set forth in HIPAA and the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH Act”), which definitions are incorporated by reference.
- 2. Obligations and Activities of Business Associate**
 - (a) Business Associate agrees to use or disclose Protected Health Information (“PHI”) received from or on behalf of Covered Entity or created for Covered Entity only as permitted or required by this Agreement, as required by law, or for Business Associate’s internal management and compliance purposes.
 - (b) Business Associate agrees to develop, implement, maintain and use appropriate administrative, technical, and physical safeguards to protect the privacy of the PHI other than as provided for by this Agreement. The safeguards must reasonably protect PHI from any intentional or unintentional use or disclosure in violation of the Privacy Rule and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Agreement.
 - (c) Business Associate agrees to comply with the Security Rule and will use appropriate administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI that Business Associate creates, receives, maintains, or transmits on Covered Entity’s behalf. Business Associate will also implement the technologies and methodologies used to render the electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity unusable, unreadable, or indecipherable to unauthorized individuals as required by the HITECH Act and the Department of Health and Human Services (“HHS”).

- (d) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- (e) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which it becomes aware not more than thirty (30) calendar days after Business Associate discovers such non-permitted use or disclosure.
- (f) Business Associate agrees to report to Covered Entity the aggregate number of unsuccessful, unauthorized attempts to access, use, disclose, modify, or destroy electronic PHI or to interfere with system operations in an information system containing electronic PHI, including pings. Such reports will be provided once per month, on or before the 10th calendar day of such month. Business Associate will report to Covered Entity any successful unauthorized access, use, disclosure, modification, or destruction of electronic PHI or any successful interference with system operations in an information system containing electronic PHI, in writing, as soon as feasible.
- (g) Business Associate agrees to provide notification to Covered Entity of any potential breach of Unsecured PHI no later than thirty (30) days after the discovery of such potential breach by Business Associate, unless a delay is allowed under applicable law. Breach is defined as the unauthorized acquisition, access, use or disclosure of PHI which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. Business Associate shall treat a potential breach as being discovered in accordance with 45 CFR § 164.410. The notification shall consist of the following: (i) a brief description of the breach, including the date of the breach and the date of discovery; (ii) identification of the types of PHI that were involved in the breach; (iii) identification of who made the non-permitted use or disclosure and who received it; (iv) identification of what corrective action has been taken; and (v) such other information, including a written report and risk assessment under 45 CFR § 164.402, as Covered Entity may request.
- (h) 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 Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Moreover, Business Associate shall ensure that any such agency or subcontractor agrees to implement reasonable and appropriate safeguards to protect the member's PHI.
- (i) Business Associate agrees to provide access, at the written request of Covered Entity, and in the time and manner mutually agreed by the parties or designated by the Secretary, to PHI in a Designated Record Set in Business Associate's custody or control, to Covered Entity or, as directed by Covered Entity, to an Individual or the Individual's designee, in order to meet the requirements under 45 C.F.R. § 164.524. Effective September 23, 2013, if Covered Entity requests an electronic copy of PHI that is maintained electronically in a Designated Record Set in Business Associate's custody or control, Business Associate will

provide an electronic copy in the form and format specified by Covered Entity if it is readily producible in such format. If it is not readily producible, Business Associate will work with Covered Entity to determine an alternative form and format that enable Covered Entity to meet its electronic access obligations under 45 CFR § 164.524.

- (j) Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 162.526 at the request of Covered Entity or an Individual, and in the time and manner mutually agreed by the parties or designated by the Secretary.
 - (k) Business Associate agrees not to receive, directly or indirectly, remuneration in exchange for any PHI of an Individual unless Covered Entity received valid authorization from the Individual or unless an exception under HIPAA or the HITECH Act applies.
 - (l) 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 Covered Entity, available to Covered Entity, or to the Secretary, in a time and manner mutually agreed by the parties or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Security and Privacy Rules.
 - (m) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
 - (n) Business Associate agrees to provide to Covered Entity or an Individual member, in a time and manner mutually acceptable to the parties, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
 - (o) In the event that Business Associate transmits or receives any Covered Electronic Transactions on behalf of Covered Entity, it shall comply with all applicable provisions of the Standards for Electronic Transactions Rule to the extent required by law, and shall ensure that any agents that assist Business Associate in conducting Covered Electronic Transactions on behalf of Covered Entity agree in writing to comply with the Standards for Electronic Transactions Rule to the extent required by law.
- 3. Permitted Uses and Disclosures by Business Associate.** 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 Covered Entity, provided that such use or disclosure would not violate the Security and Privacy Rules if done by Covered Entity including the minimum necessary requirements thereto.
- (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 use or disclose PHI to perform functions, activities, or securities for or on behalf of Covered Entity as specified in the Consulting Agreement attached to this Agreement (if applicable), provided that such use or disclosure would not violate the Security and Privacy Rules if done by Covered Entity, or the minimum necessary policies and procedures of the Covered Entity.
 - (c) Except as otherwise limited in this Agreement, Business Associate may use PHI to provide consulting services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(A).
 - (d) 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 provided that Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose 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.
 - (e) Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
 - (f) Business Associate may use 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 Covered Entity.** Upon request, Covered Entity shall provide Business Associate with a copy of its Notice of Privacy Practices and Restrictions, and:
- (a) Covered Entity shall notify Business Associate of any limitations in the Notice of Privacy Practices of Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
 - (b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
 - (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- 5. Permissible Requests by Covered Entity.** Except as otherwise permitted by this Agreement, Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Security and Privacy Rules if done by Covered Entity, except that Business Associate may use or disclose PHI for Data Aggregation or management and administrative activities of Business Associate as further specified herein or in the Consulting Agreement attached to this Agreement (where applicable).

6. Term and Termination.

- (a) Term.** This Agreement shall be effective upon execution of this Agreement by both parties, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- (b) Termination for Cause.** Upon Covered Entity's knowledge of a material breach of any provision of this Agreement by Business Associate, Covered Entity shall either:

 - (1) 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 Covered Entity;
 - (2) Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - (3) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- (c) Effect of Termination**

 - (1) Except as provided in the following paragraph, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - (2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Business Associate 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 infeasible, for so long as Business Associate maintains such PHI.

7. Legal Actions

- (a) Response to Subpoenas.** In the event that Business Associate receives a subpoena (or similar notice or request) from any judicial, administrative or other party arising out of or in connection with this Agreement, including but not limited to any unauthorized use or disclosure of PHI or any failure in Business Associate's security measures, Business Associate shall promptly forward a copy of such subpoena to Covered Entity and afford Covered Entity the opportunity to be a part of the decision making with regard to the subpoena including but not limited to responding to the subpoena.
- (b) Indemnity**

- (1) Business Associate will indemnify and hold harmless Covered Entity and any member affiliate, trustee, officer, director, employee, volunteer, or agent from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any unauthorized use or disclosure of PHI or any failure in security measures affecting PHI or any other breach of the terms of this Agreement by Business Associate or any person or entity under Business Associate's control.
- (2) Covered Entity will indemnify and hold harmless Business Associate and any Business Associate affiliate, trustee, officer, director, employee, volunteer, or agent from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any unauthorized use or disclosure of PHI or any failure in security measures affecting PHI or any other breach of the terms of this Agreement by Covered Entity or any person or entity under Covered Entity's control.

(c) Right to Tender or Undertake Defense.

- (1) If Covered Entity is named a party in any judicial, administrative, or other proceeding arising out of or in connection with any unauthorized use or disclosure of PHI or any failure in Business Associate's security or privacy measures affecting PHI, electronic PHI, or any other breach of the terms of this Agreement by (1) Business Associate, (2) any person or entity under Business Associate's control, or (3) Business Associate's subcontractors or agents, Covered Entity will have the option at any time either (1) to tender their defense to Business Associate, in which case Business Associate will provide qualified attorneys to represent Covered Entity's interests at Business Associate's expense, or (2) undertake their own defense, choosing the attorneys, consultants, and other appropriate professionals to represent their interests, in which case Business Associate will be responsible for and pay the reasonable fees and expenses.
- (2) If Business Associate is named a party in any judicial, administrative, or other proceeding arising out of or in connection with any unauthorized use or disclosure of PHI or any failure in Covered Entity's security or privacy measures affecting PHI, electronic PHI, or any other breach of the terms of this Agreement by (1) Covered Entity, (2) any person or entity under Covered Entity's control, or (3) Covered Entity's subcontractors or agents, Business Associate will have the option at any time either (1) to tender its defense to Covered Entity, in which case Covered Entity will provide qualified attorneys to represent Business Associate's interests at Covered Entity's expense, or (2) undertake its own defense, choosing the attorneys, consultants, and other appropriate professionals to represent its interests, in which case Covered Entity will be responsible for and pay the reasonable fees and expenses.

- (d) Right to Control Resolution.** Covered Entity will have the sole right and discretion to settle, compromise, or otherwise resolve any and all claims, causes of actions, liabilities or damages against them, notwithstanding that Covered Entity may have tendered their

defense to Business Associate. Any such resolution shall not relieve Business Associate of its obligation to indemnify Covered Entity.

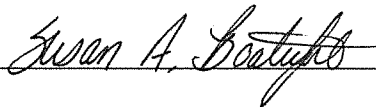
8. General Provisions

- (a) **Regulatory References.** A reference in this Agreement to a section in the Security and Privacy Rules means the section as in effect or as amended.
- (b) **Amendment.** The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Security and Privacy Rules, HIPAA, and the HITECH Act.
- (c) **Survival.** The respective rights and obligations of Business Associate under this Agreement shall survive the termination of this Agreement.
- (d) **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Security and Privacy Rules.
- (e) **No Third Parties.** Nothing express or implied in this Agreement is intended to confer, nor shall anything in this Agreement confer, upon any person or entity other than the parties and their respective successors or assigns any rights, remedies, obligations, or liabilities whatsoever.
- (f) **Conflicts.** To the extent that the law of the state in which Covered Entity does business is more stringent than Federal law regarding privacy issues, the law of such state shall control, unless such state law is preempted by the Federal law.
- (g) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one binding agreement.

The parties hereto execute this Agreement as of the date indicated above.

First Community Bank

Clarke & Company Benefits

By: 

By: _____

Title: AVP/Human Resources

Title: _____