BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BAA") is entered into by and between _____ ("Business Associate") and the Alaska Railroad Corporation on behalf of its employer-sponsored self-funded health plan benefits ("Customer") and is effective as of the last date of signature provided below (the "BAA Effective Date"). Business Associate and Customer may be referred to individually as a "Party" or, collectively, as the "Parties" in this BAA.

RECITALS

A. Business Associate is providing services to Customer under an existing written agreement (the "Underlying Agreement"), and Customer wishes to disclose certain information to Business Associate pursuant to the terms of such Underlying Agreement, some of which may constitute Protected Health Information ("PHI") (defined below).

B. Customer and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Underlying Agreement in compliance with (i) the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); (ii) Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), also known as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 ("ARRA"); and (iii) regulations promulgated thereunder by the U.S. Department of Health and Human Services, including the HIPAA Omnibus Final Rule (the "HIPAA Final Rule"), which amended the Privacy Rule and the Security Rule (as those terms are defined below) pursuant to the HITECH Act, extending certain HIPAA obligations to business associates and their subcontractors.

C. The purpose of this BAA is to satisfy certain standards and requirements of HIPAA, the Privacy Rule and the Security Rule (as those terms are defined below), and the HIPAA Final Rule, including, but not limited to, Title 45, §§ 164.314(a)(2)(i), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.").

In consideration of the mutual promises below and the exchange of information pursuant to this BAA, the Parties agree as follows:

1. Definitions.

a. Capitalized Terms. Capitalized terms used in this BAA and not otherwise defined herein shall have the meanings set forth in the Privacy Rule, the Security Rule, and the HIPAA Final Rule, which definitions are incorporated in this BAA by reference.

b. "Breach" shall have the same meaning given to such term in 45 C.F.R. § 164.402.

c. "Designated Record Set" shall have the same meaning given to such term in 45 C.F.R. § 164.501.

d. "Electronic Protected Health Information" or "Electronic PHI" shall have the same meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. § 160.103, as applied to the information that Business Associate creates, receives, maintains or transmits from or on behalf of Customer.

e. "Individual" shall have the same meaning given to such term in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

f. "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.

g. "Protected Health Information" or "PHI" shall have the same meaning given to such term in 45 C.F.R. § 160.103, as applied to the information created, received, maintained or transmitted by Business Associate from or on behalf of Customer.

h. "Required by Law" shall have the same meaning given to such term in 45 C.F.R. § 164.103.

i. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

j. "Security Incident" shall have the same meaning given to such term in 45 C.F.R. § 164.304, but shall not include (i) unsuccessful attempts to penetrate computer networks or servers maintained by Business Associate; and (ii) immaterial incidents that occur on a routine basis, such as general "pinging" or "denial of service" attacks.

k. "Security Rule" shall mean the Security Standards at 45 C.F.R. Part 160 and Part 164, Subparts A and C.

l. "Unsecured PHI" shall have the same meaning given to such term under 45 C.F.R. § 164.402, and guidance promulgated thereunder.

2. Permitted Uses and Disclosures of PHI.

a. Uses and Disclosures of PHI Pursuant to Underlying Agreement. Except as otherwise limited in this BAA, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, Customer as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Customer. To the extent Business Associate is carrying out one or more of Customer's obligations under the Privacy Rule pursuant to the terms of the Underlying Agreement or this BAA, Business Associate shall comply with the requirements of the Privacy Rule that apply to Customer in the performance of such obligation(s).

b. Permitted Uses of PHI by Business Associate. Except as otherwise limited in this BAA, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

c. Permitted Disclosures of PHI by Business Associate. Except as otherwise limited in this BAA, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that the disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person (which purpose must be consistent with the limitations imposed upon Business Associate pursuant to this BAA), and that the person agrees to notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. 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).

d. Data Aggregation. Except as otherwise limited in this BAA, Business Associate may use PHI to provide Data Aggregation services as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B), including use of PHI for statistical compilations, reports and all other purposes allowed under applicable law.

e. De-identified Data. Business Associate may create de-identified PHI in accordance with the standards set forth in 45 C.F.R. § 164.514(b) and may use or disclose such de-identified data for any purpose.

3. Obligations of Business Associate.

a. Appropriate Safeguards. Business Associate shall use appropriate safeguards and shall, after the compliance date of the HIPAA Final Rule, comply with the Security Rule with respect to Electronic PHI, to prevent use or disclosure of such information other than as provided for by the Underlying Agreement and this BAA.

b. Reporting of Improper Use or Disclosure, Security Incident or Breach. Business Associate shall report to Customer any use or disclosure of PHI not permitted under this BAA, Breach of Unsecured PHI or Security Incident experienced by Business Associate or a(n) agent or subcontractor of Business Associate, without unreasonable delay, and in any event no more than five (5) days following discovery; provided, however, that the Parties acknowledge and agree that this Section constitutes notice by Business Associate to Customer of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which notice to Customer by Business Associate shall be required only upon request. "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. Business Associate's notification to Customer of a Breach shall include: (i) the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired or disclosed during the Breach; and (ii) any particulars regarding the Breach that Customer would need to include in its notification, as such particulars are identified in 45 C.F.R. § 164.404. In the case of a Breach of Unsecured PHI in the custody and control of Business Associate or a(n) agent or subcontractor of Business Associate, Business Associate shall pay all reasonable costs (including legal, mailing, labor, administrative costs, vendor charges, and other reasonable costs), losses, penalties, fines, and liabilities arising from or associated with the Breach, including without limitation, the costs of Business Associate's, the Customer's, and Customer's health plan's actions taken to: (i) notify the affected Individual(s) of, and to respond to, the Breach; (ii) mitigate harm to the affected Individual(s); (iii) respond to questions or requests for information about the Breach; and (iv) pay fines, damages or penalties assessed against the Customer, its health plan(s), or Business Associate on account of the Breach of Unsecured PHI.

c. Business Associate's Agents. In accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 45 C.F.R. § 164.308(b)(2), as applicable, Business Associate shall enter into a written agreement with any agent or subcontractor that creates, receives, maintains or transmits PHI on behalf of Business Associate for services provided to Customer, providing that the agent agrees to restrictions and conditions that are substantially similar to those that apply through this BAA to Business Associate with respect to such PHI.

d. Access to PHI. To the extent Business Associate has PHI contained in a Designated Record Set, it agrees to make such information available to Customer pursuant to 45 C.F.R. § 164.524 within ten (10) business days of Business Associate's receipt of a written request from Customer; provided, however, that Business Associate is not required to provide such access where the PHI contained in a Designated Record Set is duplicative of the PHI contained in a Designated Record Set possessed by Customer. If an Individual makes a request for access pursuant to 45 C.F.R. § 164.524 directly to Business Associate, or inquires about his or her right to access, Business Associate shall direct the Individual to Customer.

e. Amendment of PHI. To the extent Business Associate has PHI contained in a Designated Record Set, it agrees to make such information available to Customer for amendment pursuant to 45 C.F.R. § 164.526 within twenty (20) business days of Business Associate's receipt of a written request from Customer. If an Individual submits a written request for amendment pursuant to 45 C.F.R. § 164.526 directly to Business Associate, or inquires about his or her right to amendment, Business Associate shall direct the Individual to Customer.

f. Documentation of Disclosures. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Customer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Business Associate shall document, at a minimum, the following information ("Disclosure Information"): (i) the date of the disclosure, (ii) the name and, if known, the address of the recipient of the PHI, (iii) a brief description of the PHI disclosed, (iv) the purpose of the disclosure that includes an explanation of the basis for such disclosure, and (v) any additional information required under the HITECH Act and any implementing regulations.

g. Accounting of Disclosures. Business Associate agrees to provide to Customer, within twenty (20) business days of Business Associate's receipt of a written request from Customer, information collected in accordance with Section 3(f) of this BAA, to permit Customer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. If an Individual makes a request for an accounting of disclosures of PHI pursuant to 45 C.F.R. § 164.528 directly to Business Associate, or inquires about his or her right to an accounting of disclosures of PHI, Business Associate shall direct the Individual to Customer.

h. Governmental Access to Records. Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Customer available to the Secretary for purposes of the Secretary determining Customer's compliance with the Privacy Rule.

i. Mitigation. To the extent practicable, Business Associate will reasonably cooperate with Customer's efforts to mitigate a harmful effect that is known to Business Associate of a use or disclosure of PHI that is not permitted by this BAA.

j. Minimum Necessary. Business Associate shall request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure, in accordance with 45 C.F.R. § 164.514(d), and any amendments thereto.

k. HITECH Act Applicability. Business Associate acknowledges that enactment of the HITECH Act, as implemented by the HIPAA Final Rule, amended certain provisions of HIPAA in ways that now directly regulate, or will on future dates directly regulate, Business Associate under the Privacy Rule and the Security Rule. Business Associate agrees, as of the compliance date of the HIPAA Final Rule, to comply with applicable requirements imposed under the HIPAA Final Rule.

4. Obligations of Customer.

a. Notice of Privacy Practices. Customer shall notify Business Associate of any limitation(s) in an applicable notice of privacy practices 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. Customer shall provide such notice no later than fifteen (15) days prior to the effective date of the limitation.

b. Notification of Changes Regarding Individual Permission. Customer 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. Customer shall provide such notice no later than fifteen (15) days prior to the effective date of the change. Customer shall obtain any consent or authorization that may be required by the HIPAA Privacy Rule, or applicable state law, prior to furnishing Business Associate with PHI.

c. Notification of Restrictions to Use or Disclosure of PHI. Customer shall notify Business Associate of any restriction to the use or disclosure of PHI that Customer 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. Customer shall provide such notice no later than fifteen (15) days prior to the effective date of the restriction. If

Business Associate reasonably believes that any restriction agreed to by Customer pursuant to this Section may materially impair Business Associate's ability to perform its obligations under the Underlying Agreement or this BAA, the Parties shall mutually agree upon any necessary modification of Business Associate's obligations under such agreements.

d. Permissible Requests by Customer. Customer shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule, the Security Rule or the HIPAA Final Rule if done by Customer, except as permitted pursuant to the provisions of Section 2 of this BAA.

5. Term and Termination.

a. Term. The term of this BAA shall commence as of the BAA Effective Date, and shall terminate when all of the PHI provided by Customer to Business Associate, or created or received by Business Associate on behalf of Customer, is destroyed or returned to Customer or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with Section 5(c).

b. Termination for Cause. Upon either Party's knowledge of a material breach by the other Party of this BAA, such Party shall provide written notice to the breaching Party stating the nature of the breach and providing an opportunity to cure the breach within thirty (30) business days. Upon the expiration of such 30-day cure period, the non-breaching Party may terminate this BAA and, at its election, the Underlying Agreement, if cure is not possible.

c. Effect of Termination.

(i) Except as provided in paragraph (ii) of this Section 5(c), upon termination of the Underlying Agreement or this BAA for any reason, Business Associate shall return or destroy all PHI received from Customer, or created or received by Business Associate on behalf of Customer, and shall retain no copies of the PHI.

(ii) If it is infeasible for Business Associate to return or destroy the PHI upon termination of the Underlying Agreement or this BAA, Business Associate shall, for so long as Business Associate maintains such PHI: (i) protect all such PHI in accordance with the covenants and representations contained herein; and (ii) limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible.

d. Indemnification. In addition to the indemnification protections and obligations of the Parties provided in the Underlying Agreement, Business Associate shall indemnify, hold harmless, and defend the Customer and its health plans from and against any and all costs, losses, penalties, fines, and liabilities directly resulting from a Breach of Unsecured PHI of the Customer that is in the custody and control of Business Associate or its agent or subcontractor, or a failure by Business Associate or its agent or subcontractor to comply with its obligations under this BAA and applicable laws. Business Associate's obligations under this Section 5(d) will not be subject to any liability limitation provisions in the Underlying Agreement and will be continuous and survive termination of this BAA and the Underlying Agreement.

6. Cooperation in Investigations. The Parties acknowledge that certain breaches or violations of this BAA may result in litigation or investigations pursued by federal or state governmental authorities of the United States resulting in civil liability or criminal penalties. Each Party shall cooperate in good faith in all respects with the other Party in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry.

7. Survival. The respective rights and obligations of Business Associate under Sections 1(b), 5(c) and 5(d) of this BAA shall survive the termination of the BAA and the Underlying Agreement.

8. Effect of BAA. In the event of any inconsistency between the provisions of this BAA and the Underlying Agreement, the provisions of this BAA shall control. In the event of inconsistency between the provisions of this BAA and mandatory provisions of the Privacy Rule, the Security Rule or the HIPAA Final Rule, or their interpretation by any court or regulatory agency with authority over Business Associate or Customer, such interpretation shall control; provided, however, that if any relevant provision of the Privacy Rule, the Security Rule or the HIPAA Final Rule is amended in a manner that changes the obligations of Business Associate or Customer that are embodied in terms of this BAA, then the Parties agree to negotiate in good faith appropriate non-financial terms or amendments to this BAA to give effect to such revised obligations. Where provisions of this BAA are different from those mandated in the Privacy Rule, the Security Rule, or the HIPAA Final Rule, but are nonetheless permitted by such rules as interpreted by courts or agencies, the provisions of this BAA shall control.

9. General. This BAA is governed by, and shall be construed in accordance with, the laws of the State that govern the Underlying Agreement. Customer shall not assign this BAA without the prior written consent of Business Associate, which shall not be unreasonably withheld. If any part of a provision of this BAA is found illegal or unenforceable, it shall be enforced to the maximum extent permissible, and the legality and enforceability of the remainder of that provision and all other provisions of this BAA shall not be affected. All notices relating to the Parties' legal rights and remedies under this BAA shall be provided in writing to a Party, shall be sent to its address set forth in the signature block below, or to such other address as may be designated by that Party by notice to the sending Party, and shall reference this BAA. This BAA may be modified, or any rights under it waived, only by a written document executed by the authorized representatives of both Parties. Nothing in this BAA shall confer any right, remedy or obligation upon anyone other than Customer and Business Associate. This BAA is the complete and exclusive agreement between the Parties with respect to the subject matter hereof, superseding and replacing all prior agreements, communications and understandings (written and oral) regarding its subject matter.

IN WITNESS WHEREOF, the Parties hereto have duly executed this BAA as of the BAA Effective Date.

CUSTOMER	**BUSINESS ASSOCIATE**
Alaska Railroad Corporation	
_____	_____
Address: PO Box 107500 Anchorage, AK 99501	Address:
_____	_____
By: _____	By: _____
Print Name: Megan Schmidt	Print Name:
Title: Manager, Benefits & Records	Title:
Date: _____	Date: _____