



RISK MANAGEMENT SERVICES AGREEMENT

This Risk Management Services Agreement (“Agreement”) is between the undersigned Plan Sponsor (“Employer”) and John Alden Life Insurance Company, Time Insurance Company, Union Security Insurance Company and/or any of their subsidiaries and/or affiliates (“Service Provider”). This Agreement shall become effective on the later of the date this Agreement is signed by the Employer or the date of the approval of the Employer’s stop loss insurance (the “Effective Date”).

WHEREAS, Employer maintains a self-funded employee welfare benefit plan providing for the payment or reimbursement of certain medical expenses incurred by eligible employees of the Employer and their dependents; and

WHEREAS, Service Provider is in the business of providing certain administrative services relating to self-funded welfare benefit plans; and

WHEREAS, Service Provider and the Employer have determined it is in their best interests to enter into this Agreement pursuant to which Service Provider will render administrative services with respect to the Plan.

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements set forth herein, the parties agree as follows:

SECTION 1 – DEFINITIONS

Agreement Period: Period of 12 months commencing on the Effective Date and each immediately succeeding 12-month period until the Agreement is terminated as set forth below.

Employee: A current or former employee of the Employer.

ERISA: Employee Retirement Income Security Act of 1974 (“ERISA”), as amended from time to time.

Network Provider: Health care provider who participates in one of the Provider Networks.

Participant: Employee or dependent who is covered by the Plan.

Plan: The Employee Health Care Plan sponsored by Employer which is a self-funded plan governed by ERISA providing for the payment of certain medical expenses incurred by Participants.

Plan Administrator: “Administrator” or “Plan Administrator” as these terms are defined under ERISA and shall refer to the current or succeeding person, or entity designated as such by the terms of the instrument under which the Plan is operated, or by law.

Proprietary Business Information: Information about the Employer’s business or Service Provider’s business that is confidential, proprietary, trade secret or is not readily available to the general public; or, information that has been designated by the Employer or Service Provider as confidential or proprietary.

Provider Network: Network of Providers who have entered into or are governed by contractual arrangements under which they agree to provide health care services to Participants and accept negotiated fees for these services.

Self-Fund and Self-Funded: Means that the Employer has the sole responsibility to pay and provide funds for all Plan benefits; provided, however, that the Employer may require Participant contributions to the Plan and may obtain stop loss insurance with respect to the Plan.

Third Party Administrator (“TPA”): Means the licensed administrator which administers claims and other matters on behalf of the Plan.

SECTION 2 – EMPLOYEE BENEFIT PLAN

Section 2.1 Responsibility for the Plan. The Employer shall have responsibility for the Plan including its benefit design and compliance with any laws that apply to the Employer or the Plan, whether or not the Employer or someone the Employer designates is the Plan administrator. Service Provider is not the Plan Administrator or a fiduciary of the Plan.

Section 2.2 The Plan Document. The Employer or TPA will provide Service Provider with a copy of the Plan document.

Section 2.3 Plan Changes. The Employer or TPA will notify Service Provider in writing if the Employer changes the Plan’s benefits or other Plan provisions at least 70 days prior to the change becoming effective. Service Provider may give the Employer 30 days written notice of termination of this Agreement following Service Provider’s receipt of the Employer’s notice of such change(s). If Service Provider decides to continue providing services, the Employer will pay Service Provider for any and all reasonable costs that Service Provider incurs to implement the Plan changes. In addition, the fees the Employer is required to pay hereunder may be changed by Service Provider in accordance with Section 7 of this Agreement.

SECTION 3 – RECORDS, INFORMATION, AUDIT

Section 3.1 Records. Service Provider will keep records relating to the services it provides under this Agreement for as long as it is required to do so by law.

Section 3.2 Access to Information. If the Employer needs information for an audit or otherwise that Service Provider has in its possession to administer the Plan, Service Provider will give the Employer access to that information as long as the information relates to Service Provider's services under this Agreement, and the Employer gives 60 days prior notice of the need for the information.

Section 3.3 Audits. During the term of the Agreement, and at any time within 6 months following its termination, the Employer or a mutually agreeable third party may audit Service Provider to determine whether Service Provider is fulfilling the terms of this Agreement. The Employer must give the Service Provider at least 60 days advance notice of Employer's intent to audit. The place, time, type, duration, and frequency of all audits must be reasonable and agreed to by Service Provider. All audits shall be limited to information relating to the calendar year in which the audit is conducted and/or the immediately preceding calendar year.

The Employer will pay any audit-related expenses, and will be charged an additional fee, determined by Service Provider, for more than one audit every 12 months or for any on-site audit visit not completed within 5 business days. The Employer also will pay any unanticipated expenses Service Provider incurs during the course of an audit while this Agreement is in effect, and all expenses incurred by Service Provider on any audit initiated after this Agreement is discontinued. The Employer will provide Service Provider with a copy of any audit reports.

Section 3.4 – Confidential Participant health information shall be used solely according to the terms set forth in the Business Associate Addendum, attached as Exhibit A.

SECTION 4 – INDEMNIFICATION

Section 4.1 The Employer Indemnifies Service Provider. The Employer will indemnify Service Provider and hold Service Provider harmless against any and all losses, liabilities, penalties, fines, costs, damages, and expenses Service Provider incurs, including reasonable attorney's fees, except where there has been a finding of gross negligence or willful misconduct, on the part of Service Provider, that results in the foregoing losses, in the performance of Service Provider's obligations under this Agreement or where there has been material breach of this Agreement by Service Provider, as determined by a court or other tribunal having jurisdiction over the matter.

Section 4.2 The Service Provider Indemnifies Employer. The Service Provider will indemnify Employer and hold Employer harmless against any and all losses, liabilities, penalties, fines, costs, damages, and expenses Employer incurs, including reasonable attorney's fees, except where there has been a finding of gross negligence or willful misconduct, on the part of Employer, that results in the foregoing losses, in the performance of Employer's obligations under this Agreement or where there has been material breach of this Agreement by Employer, as determined by a court or other tribunal having jurisdiction over the matter.

SECTION 5 – PLAN BENEFITS LITIGATION

Section 5.1 Litigation Against Service Provider. If a demand is asserted or litigation or administrative proceedings are commenced by a Participant or health care provider against Service Provider, or against the Plan and Service Provider jointly, to recover Plan benefits ("Plan Benefits Litigation"), Service Provider will select and retain defense counsel to represent Service Provider's interest. In actions asserted against both the Employer and Service Provider, and provided no conflict of interest exists or arises between the parties, Service Provider will agree to joint defense counsel. All legal fees and costs Service Provider incurs in defense of the litigation will be paid by the Employer, except as provided in Section 4.2. The failure to seek payment of Service Provider's legal fees and costs does not relieve the Employer of the Employer's obligations to indemnify Service Provider for other amounts as provided in Section 4.1. The failure to provide notice of Plan Benefits Litigation does not relieve the Employer of the Employer's obligations to pay Service Provider's legal fees and costs. Both parties will cooperate fully with each other in the defense of the Plan Benefits Litigation. In all events, the Employer is responsible for the full amount of any Plan benefits paid as a result of such litigation.

Section 5.2 Litigation Against the Employer. If litigation or administrative proceedings are commenced against the Employer and/or the Plan, but not against Service Provider, the Employer will select and retain counsel and the Employer will have the responsibility for all legal fees and costs in connection with such litigation, unless otherwise required under section 4.2 of this Agreement. Service Provider will cooperate fully in the defense of litigation arising out of matters relating to this Agreement.

SECTION 6 – ELIGIBILITY AND FINANCIAL INFORMATION

Section 6.1 Eligibility Information. The Employer or TPA shall provide Service Provider a list of Employer's employees, their dependents and/or other persons who are eligible to be Participants. This information must be accurate and provided to Service Provider in a mutually agreed-upon format. Employer will notify Service Provider promptly of any changes. Service

Provider shall be entitled to rely on the most current information in Service Provider's possession regarding eligibility of Participants in providing services under this Agreement.

Section 6.2 Financial Information. At Service Provider's request, Employer or TPA will provide all financial information that Service Provider needs to perform its services hereunder.

SECTION 7 – SERVICE FEES

Section 7.1 Service Fees. Subject to changes made in accordance with Section 7.2 below, Employer will pay to Service Provider a monthly service fee equal to the amount noted in signed proposal to Allied Benefits System, Inc. under their Administrative Services Agreement. Such fees will be paid to the TPA which will in turn remit the fees to Service Provider.

Section 7.2 Changes in Service Fees. Service Provider can change the service fees: (1) on each Agreement Period anniversary; (2) any time there are changes made to this Agreement or the Plan; (3) when there are changes in laws or regulations which affect the services provided under this Agreement; or (4) to reflect changes in enrollment under the Plan. In such a case, the new service fee shall be effective upon 30 days prior written notice.

SECTION 8 – TERM OF THE AGREEMENT

This Agreement will be in effect for an initial Agreement Period commencing on the Effective Date and will automatically continue, unless this Agreement is terminated.

SECTION 9 – TERMINATION OF THE AGREEMENT

This Agreement will terminate when: (1) the Plan terminates; (2) both parties agree to terminate the Agreement; (3) after the initial Agreement Period, either party gives the other party at least 30 business days prior written notice; (4) Employer receives notice of termination because the Employer did not pay the fees or other amounts the Employer owed Service Provider under this Agreement; (5) either party is in material breach of this Agreement, other than by non-payment or late payment by the Employer of fees owed, and does not correct the breach within thirty (30) days after being notified in writing by the other party; (6) any state or other jurisdiction penalizes a party for administering the Plan under the terms of this Agreement and in connection with such penalty, such state or other jurisdiction requires termination of this Agreement, or (7) Employer's Stop Loss Insurance issued by the Service Provider terminates. Notice must be given to the other party when reasonably practical. Notwithstanding any provision of this Agreement, if Employer does not accept or is not approved for stop loss insurance by an insurer acceptable to the Service Provider this Agreement shall be deemed to have never taken effect.

Notwithstanding the foregoing, upon termination of this Agreement, Service Provider will provide claim run-out services in accordance with the terms of the Plan and/or Employer's stop loss insurance policy.

SECTION 10 - SERVICES PROVIDED

Section 10.1 Network Services. Service Provider will establish network arrangements with health care providers that agree to provide services covered under the Plan to Participants at a negotiated rate (hereinafter "Network Services Arrangements"). Service Provider shall have the sole discretion as to which Network Services Arrangement (both primary and passive or ancillary) will be accessed by the Plan. Service Provider shall pay the network access fee required under any such Network Services Arrangement. Service Provider will provide Employer with continuing access to provider information to assist covered persons in locating Network Providers. Providers participating in the network may change at any time without notice to Employer. Service Provider will update the provider information to reflect changes as soon as reasonably possible. Network Providers are not employees, agents or partners of Service Provider. Network Providers participate in the Provider Network only as independent contractors. Network Providers and the Participants are solely responsible for any health care services rendered to Participants.

Section 10.2 Negotiation Services. Service Provider or its designee shall provide all out of network negotiation services, which will include but not be limited to the negotiations with providers to obtain discounts on claims that meet the appropriate criteria as determined by the Plan. Employer agrees to immediately fund the payment of any claim which has been negotiated through these services when necessary to secure the discount. Employer understands and agrees that: (a) any such negotiated claim which is not funded in a timely manner may lose the negotiated discount, (b) Employer may be responsible for the applicable fee associated with such negotiation services if the discount is lost, and (c) Service Provider will not be responsible for the loss of such a negotiated discount.

Section 10.3 Medical Management Services. Service Provider and/or its designee shall be solely responsible for the provision of all health management and utilization management services as they relate to the Plan. Without limiting the foregoing, this includes all stages of health management, including utilization management and case management, and may include disease management as determined appropriate by Service Provider. Service Provider shall investigate those claims referred by Employer or the TPA that require a clinical determination. Service Provider will provide professionals with appropriate credentials to make such determinations. Service Provider and/or its designee shall issue a determination to the

Participant and/or providers in the manner and within the time frame set by applicable law, provide the appropriate notice of any additional appeal rights, and handle all appeal levels related to such determinations.

Section 10.4 Pharmacy Benefit Services. Service Provider or its designee shall perform pharmacy benefit management.

Section 10.5 Risk Management, Underwriting and Funding. Service Provider will assist Employer in determining the anticipated expenses to be paid under the Plan and to establish the proper funding for the Plan, which may change from time to time. Service Provider may recommend changing funding: (1) on each Agreement Period anniversary; (2) any time there are changes made to this Agreement or the Plan; (3) when there are changes in laws or regulations which affect the services provided under this Agreement; or (4) to reflect changes in enrollment under the Plan.

Section 10.6 Eligibility. Service Provider will assist Employer in determining which of its employees (and their dependents) are eligible to enroll in coverage under the Plan, based on eligibility requirements established by Employer.

SECTION 11 – MISCELLANEOUS

Section 11.1 Subcontractors. Service Provider may use its affiliates or other subcontractors to perform its services under this Agreement. However, Service Provider will be responsible for those services to the same extent that it would have been had it performed those services without the use of an affiliate or subcontractor.

Section 11.2 Assignment. Except as provided in this Section, neither party can assign this Agreement or any rights or obligations under this Agreement to anyone without the other party’s prior written consent, which shall not be unreasonably withheld. Notwithstanding the preceding sentence, Service Provider may assign this Agreement, including all its rights and obligations to any of its subsidiaries or affiliates, or a purchaser of all or substantially all of Service Provider’s assets, upon providing notice to Employer of the assignment.

Section 11.3 Governing Law. This Agreement is governed by the laws of the State of Wisconsin and without application of any choice of law principles.

Section 11.4 Entire Agreement. This Agreement, with its exhibits, constitutes the entire Agreement between the parties governing the subject matter of this Agreement. This Agreement replaces any prior written or oral communications or agreements between the parties relating to the subject matter of this Agreement. The headings and titles within this Agreement are for convenience only and are not part of the Agreement.

Section 11.5 Amendment. Except as may otherwise be set forth in this Agreement, the Agreement may be amended only by both parties agreeing to the amendments in writing, executed by a duly authorized person of each party.

Section 11.6 Waiver. Nothing in this Agreement is considered to be waived by any party unless the party claiming the waiver receives the waiver in writing. No breach of the Agreement is considered to be waived unless the non-breaching party waives it in writing. A waiver of one provision does not constitute a waiver of any other.

SECTION 12 – NOTICES

Section 12.1 Notices. Any notices to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be sent to the following named persons at the following addresses, by certified mail, return receipt requested, postage prepaid, (or by FedEx or other nationally recognized overnight air express mail service).

To Service Provider: Assurant Health, 501 West Michigan Avenue, Milwaukee, WI 53203, Attn: Senior Vice-President, Secretary and General Counsel

To Employer: Employer’s last address shown in Service Provider’s records.

Any such Notice shall be deemed given and effective on the date delivered or refused.

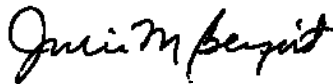
This Agreement may be signed by the parties in counterparts.

IN WITNESS WHEREOF, this Agreement has been executed on the date shown below.

PLAN SPONSOR/EMPLOYER

SERVICE PROVIDER

By _____
(Authorized Signature)

By 
(Authorized Signature)

Print Name _____

Print Name Julie Berquist

Print Title _____

Print Title Vice President, Group Markets

Date _____

EXHIBIT A
BUSINESS ASSOCIATE ADDENDUM

This HIPAA Business Associate Addendum ("Addendum") supplements and is made a part of the Risk Management Services Agreement ("Agreement") between _____ (group name), plan sponsor of the _____ (group name) Employee Benefit Plan ("Covered Entity") and John Alden Life Insurance Company, Time Insurance Company, Union Security Insurance Company or any of their affiliates ("Business Associate").

WHEREAS, Covered Entity and Business Associate are parties to the Agreement pursuant to which Business Associate provides certain services to Covered Entity. In connection with Business Associate's services, Business Associate creates or receives Protected Health Information ("PHI") from or on behalf of Covered Entity, which information is subject to protection under the Health Insurance Portability and Accountability Act of 1996, and its implementing privacy and security regulations ("HIPAA"). The purpose of this Agreement is to satisfy certain standards and requirements of HIPAA.

WHEREAS, Covered Entity and Business Associate agree to incorporate into this Addendum the requirements of the Health Information Technology for Economic and Clinical Health Act ("HITECH"), as incorporated in the American Recovery and Reinvestment Act of 2009, and its implementing regulations issued by the U.S. Department of Health and Human Services ("HHS"), with respect to HITECH's Breach notification requirements.

WHEREAS, Covered Entity and Business Associate agree to incorporate into this Addendum any regulations issued by HHS with respect to the HITECH Act that relate to the obligations of the parties.

WHEREAS, in light of the foregoing and the requirements of HIPAA, Business Associate and Covered Entity agree to be bound by the following terms and conditions:

1. **Definitions.**

(a) **General.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms are used in the Privacy Rule, Security Rule and/or HITECH and its implementing regulations.

(b) **Specific.**

- a. **Breach** shall have the same meaning as specified in 45 CFR § 164.402, as may be amended.
- b. **Effective Date** is the date on which the underlying Arrangement goes into effect.
- c. **Electronic Protected Health Information ("EPHI")** shall have the same meaning as specified in 45 CFR § 160.103, as may be amended, limited to all such information relating to the Covered Entity's customers, applicants or claimants that Business Associate may receive, review, create, transmit, observe, or otherwise have an opportunity to use or disclose while performing its obligations under this Agreement or the underlying Arrangement.
- d. **Protected Health Information ("PHI")** shall have the same meaning as specified in 45 CFR § 160.103, as may be amended, limited to all such information, regardless of its form, relating to the Covered Entity's customers, applicants or claimants that Business Associate may receive, review, create, transmit, observe, or otherwise have an opportunity to use or disclose while performing its obligations under this Agreement PHI includes EPHI as defined above.
- e. **Privacy Rule** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, subparts A and E and any subsequent amendments including, but not limited to, the Omnibus Rule.
- f. **Secretary** shall mean the Secretary of Health and Human Services (HHS) or any HHS officer, employee, or agent to whom the Secretary delegates authority.
- g. **Security Incident** shall have the same meaning as specified in 45 CFR § 164.304, as may be amended.
- h. **Security Rule** shall mean the Security Standards and Implementation Specifications at 45 CFR Parts 160 and 164, subparts A and C and any subsequent amendments including, but not limited to, the Omnibus Rule.
- i. **Subcontractor** shall have the same meaning as specified in 45 CFR § 160.103, as may be amended, limited to a Subcontractor to whom Business Associate delegates a function, activity, or service that is necessary for Business Associate to meet its obligations for or on behalf of Covered Entity under the terms of this Agreement.

2. **Obligations and Activities of Business Associate**

- a. **Confidentiality of PHI.** Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement or as required by law. Business Associate shall not at any time access any PHI for any purpose other than those specifically authorized by Covered Entity or required by law.
- b. **Permitted Uses and Disclosures.** Except as otherwise provided in this Agreement, Business Associate shall use and disclose PHI solely for meeting its obligations and performing any functions, activities and/or services for or on behalf of Covered Entity under the terms of this Agreement, or as allowed or required by law. In addition, Business Associate may: use or disclose PHI in the following instances:
 - i. Use PHI as necessary for the proper management and administration of Business Associate.
 - ii. Disclose PHI as necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that: (1) the disclosure is required by law; or (2) Business Associate obtains reasonable assurances from the third-party who receives the disclosed PHI that the confidentiality of the PHI will be maintained, that PHI will be further disclosed only as required by law or for the purpose for which it was disclosed, and that third-party will notify Business Associate of any breaches of confidentiality of PHI.
3. **Disclosure to Subcontractor.** Business Associate may allow a Subcontractor to create, receive, maintain or transmit PHI on behalf of Business Associate if Business Associate obtains satisfactory assurances by a written agreement or contract that conforms with 45 CFR §§ 164.502(e)(1)(ii), 164.504, 164.308(b)(2), and 164.314(a) acknowledging that the Subcontractor will comply with all applicable provisions of the Privacy, Security, and Omnibus Rules.
4. **Prohibited Uses and Disclosures.** Business Associate shall not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule if used or disclosed by Covered Entity, except as permitted by sections 2.(b)(1) and (2) and section (2)(e), above. Additionally, Business Associate must comply with all applicable provisions of 45 CFR § 164.502(a)(5).
5. **Aggregation of Data.** Business Associate may aggregate the PHI received or obtained from Covered Entity with other PHI in its possession provided that the purpose of such aggregation is to provide Covered Entity with data analyses related to Covered Entity's "health care operations" (45 CFR § 164.501) as that term is defined in the Privacy Rule.
6. **Appropriate Safeguards.**
 - a. Business Associate shall use reasonable and appropriate safeguards to maintain the privacy and security of PHI and to prevent unauthorized use, disclosure, damage, or destruction of PHI.
 - b. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI in compliance with the Security Rule and any subsequent amendments, including any applicable provision of the Omnibus Rule.
 - c. Such efforts shall also include the adoption and enforcement of policies and procedures to reasonably and appropriately implement the requirements of the Privacy, Security, and Omnibus Rules.
7. **Reporting Improper Use or Disclosure.** Business Associate shall promptly report to Covered Entity (as determined pursuant to 45 CFR § 164.404(a)(2)) any unauthorized use, disclosure, damage, destruction, or Breach of PHI by Business Associate or its Subcontractors, or any other Security Incident of which it becomes aware, and to establish procedures for mitigating, to the greatest extent possible, any harmful effect that is created by any improper use, disclosure, damage, destruction, Security Incident, or Breach of PHI. Business Associate shall assist in Covered Entity's notification of the occurrence to all necessary parties as required by law, regulation, or as determined necessary by Covered Entity.
8. **Access to PHI.**
 - a. To enable Covered Entity to fulfill its obligations under the Privacy Rule, Business Associate shall, at the request and direction of Covered Entity, make PHI maintained by Business Associate or its Subcontractors available to Covered Entity or a designated individual for inspection and copying within ten (10) days of receipt of such a request from Covered Entity.
9. If Business Associate maintains PHI electronically and an individual requests from Covered Entity or Business Associate an electronic copy, Business Associate shall provide Covered Entity access to the requested PHI in an electronic form and format as requested by individual if that form and format is readily producible. Otherwise, Business Associate shall provide the PHI in an agreed upon electronic readable form and format.
10. In the event an individual requests that his or her PHI be sent directly to a designated individual, Business Associate will, upon Covered Entity's direction, send the PHI directly to the designated individual if the request meets all the requirements of Section 164.524(c)(3)(ii).
11. **Amendment of PHI.** To enable Covered Entity to fulfill its obligations under the Privacy Rule, Business Associate shall, within ten (10) days of a request from Covered Entity, make PHI maintained by Business Associate or its Subcontractors available for amendment and, as directed by Covered Entity, shall incorporate

any amendment or related statements into the information held by Business Associate and its Subcontractors. If any individual directly requests that Business Associate or its Subcontractor amend PHI, Business Associate and its Subcontractors shall notify Covered Entity within ten (10) days of such request.

12. **Accounting of Disclosures.** Business Associate and its Subcontractors shall, within ten (10) days of a request from Covered Entity, make available the information necessary for Covered Entity to provide an individual with an accounting of the disclosures of his or her PHI as required under the Privacy Rule. At a minimum, such information shall include: 1. the date of the disclosure; 2. the name and address of the entity or person receiving the PHI; 3. a brief description of the PHI disclosed; and 4. a brief description of the reason for the disclosure or a copy of the written request for the disclosure. Such information must be maintained by Business Associate and its Subcontractors for a period of six (6) years from the date of each disclosure for which accounting is required under 45 CFR § 164.528(a)(1). If any individual directly requests that Business Associate or its Subcontractors provide an accounting of disclosures of PHI, Business Associate or its Subcontractors shall notify Covered Entity within ten (10) days of such request.
13. **Covered Entity's Obligations.** To the extent that Business Associate is required under this Agreement to carry out obligations of Covered Entity imposed by the Privacy Rule, Business Associate will comply with all applicable provisions of the Privacy, Security, and Omnibus Rules in performing such obligations.
14. **Minimum Necessary.** Business Associate agrees that it will not request or disclose more than the minimum amount of PHI necessary to accomplish the purpose of the request, use, or disclosure or request.
15. **Right to Audit, Inspection, and Enforcement.** Business Associate agrees to make its internal practices, processes, books, and records relating to the use or disclosure of PHI available to Covered Entity, Covered Entity's parent and the Secretary or the Secretary's designee for purposes of determining Covered Entity's compliance with the Privacy Rule, Security Rule and applicable provisions of the Omnibus Rule.
16. **Employee Training and Awareness.** Business Associate shall provide appropriate training regarding the requirements of this Agreement to any employee (or other workforce member) accessing, using or disclosing PHI and shall develop and implement a system of sanctions for any employee (or other workforce member) or Subcontractor who violates the requirements imposed by this Agreement.
17. **Restriction Requests; Confidential Communications.** Business Associate shall comply with any restriction request and any confidential communication request of which Covered Entity makes Business Associate aware pursuant to section 3.c, below.
18. **Notice of Privacy Practices.** Business Associate shall use and disclose PHI in compliance with the terms of Covered Entity's updated privacy practices notice, as provided to Business Associate pursuant to section 3.a, below.
19. **Transactions Rule Compliance.** If Business Associate conducts a Standard Transaction (as that term is defined in 45 CFR § 162.103) for or on behalf of Covered Entity, Business Associate will comply, and will require any of its Subcontractors to comply, with each applicable requirement of 45 CFR Part 162.
20. **Obligations of Covered Entity**
 - a. **Notice of Privacy Practices.** Covered Entity agrees to inform Business Associate of its current privacy practices and any future changes to those practices by providing Business Associate with updated copies of its notice of privacy practices.
 - b. **Revocation of Authorization by Individual.** Covered Entity agrees to inform Business Associate of any change to or revocation of an individual's authorization to use or disclose PHI to the extent that such changes may affect Business Associate's use or disclosure of PHI.
 - c. **Restrictions on Use and Disclosure.** Covered Entity agrees to notify Business Associate of any restrictions to the use or disclosure of PHI agreed to by Covered Entity in accordance with the Privacy, Security, and Omnibus Rules to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
21. **Permissible Requests.** Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy, Security, or Omnibus Rules if done by Covered Entity.

22. Term and Termination

- a. **Term.** This Agreement shall be effective from the Effective Date until all PHI provided by or created for Covered Entity is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy PHI, protections are extended to such PHI in accordance with the terms of this Agreement.
- b. **Material Breach.** A breach by Business Associate of any material provision of this Agreement or the Privacy, Security, or Omnibus Rules, as determined by Covered Entity, shall constitute a material breach of this Agreement and shall provide grounds for the immediate termination of this Agreement and the Arrangement.
- c. **Business Associate's Reasonable Steps to Cure Breach.** If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligations under this Agreement or the Privacy, Security or Omnibus Rules, Covered Entity may provide Business Associate with an opportunity to cure the breach or violation. If Business Associate fails to cure the breach or violation to the satisfaction of Covered Entity within the time period specified by Covered Entity, Covered Entity shall have the right to terminate the Agreement/.

23. Effect of Termination.

- a. Upon termination of the Arrangement (including termination due to material breach of this Agreement pursuant to section 5.a, above), Business Associate shall return or destroy all PHI in its possession or the possession of its Subcontractors. If PHI is destroyed, Business Associate agrees to provide Covered Entity with appropriate documentation and a certification evidencing such destruction. Business Associate agrees that it will not retain any copies of PHI it returns or destroys in any form or medium except as required by law.
- b. If it is infeasible to return or destroy any or all PHI, Business Associate and its Subcontractors shall continue to extend the protections of this Agreement to such information and limit further use and disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible.

24. Obligations and Activities of Business Associate under HIPAA Privacy Rules.

- a. Use and Disclosure. Business Associate agrees to not use or disclose PHI other than as permitted or required by this Addendum or as Required by Law.
- b. Appropriate Safeguards. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Addendum. Without limiting the generality of the foregoing, Business Associate agrees to protect the integrity and confidentiality of any PHI it electronically exchanges with Covered Entity.
- c. Mitigation. 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 Addendum.
- d. Reporting. Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Addendum of which it becomes aware.
- e. Agents. 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 Addendum to Business Associate with respect to such information.
- f. Access to Designated Record Sets. To the extent that Business Associate possesses or maintains PHI in a Designated Record Set, Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner reasonably requested by Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.
- g. Amendments to Designated Record Sets. To the extent that Business Associate possesses or maintains PHI in a Designated Record Set, 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 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner reasonably requested by Covered Entity.
- h. Access to Books and Records. 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 the Covered Entity, or to the Secretary, in a time and manner reasonably requested by the Covered Entity or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- i. Accountings. 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 CFR 164.528.
- j. Requests for Accountings. Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner reasonably requested by Covered Entity, information collected in accordance with Section 2.i. of 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 CFR 164.528.

25. Obligations and Activities of Business Associate under HIPAA Security Rules.

- a. Business Associate shall use appropriate administrative, technical, and physical safeguards ("Safeguards"), that reasonably and appropriately protect the integrity, confidentiality, and availability of, and to prevent non-permitted or violating use or disclosure of, EPHI created, transmitted, maintained, or received in connection with the services provided under the Agreement.
- b. Business Associate shall document and keep these Safeguards current. These Safeguards shall extend to transmission, processing, and storage of EPHI. Transmission of EPHI shall include transportation of storage media, such as magnetic tape, disks or compact disk media, from one location to another. Upon Covered Entity's request, Business Associate shall provide Covered Entity access to, and copies of, documentation regarding such Safeguards.
- c. Business Associate agrees that it shall implement the requirements of the HIPAA Security Rule (45 C.F.R. Parts 160, 162, and 164) by:
 - i. Implementing administrative, physical, and technical safeguards consistent with (and as required by) the Security Rule that reasonably protect the confidentiality, integrity, and availability of EPHI that it creates,

- receives, maintains, or transmits on behalf of Covered Entity.
- ii. Ensuring that any agents, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect such information;
 - iii. Reporting and tracking all Security Incidents as described below;
 - iv. Business Associate shall report to Covered Entity any Security Incident that results in (i) unauthorized access, use, disclosure, modification, or destruction of Covered Entity's EPHI, or (ii) interference with Business Associate's system operations in Business Associate's information systems, of which Business Associate becomes aware;
 - v. Business Associate shall report to Covered Entity within one (1) business day after Business Associate learns of such non-permitted or violating use or disclosure. For any other Security Incident, Business Associate shall aggregate the data and provide such reports on a quarterly basis, or more frequently upon Covered Entity's request.
 - vi. Making Business Associate's policies and procedures and documentation required by the Security Rule related to these safeguards available to the Secretary for purposes of determining Covered Entity's compliance with the Security Rule.
- d. Business Associate agrees to take all reasonable steps to mitigate, to the extent practicable, any harmful effect that is known to Business Associate resulting from a Security Incident, including any reasonable steps recommended by Covered Entity. Business Associate agrees to provide to Covered Entity all information concerning such disclosure or breach as may be reasonably requested by Covered Entity.

26. Obligations and Activities of Business Associate under HITECH.

- a. Business Associate shall, as required by law, notify Covered Entity of the discovery of any Breach of Unsecured PHI as defined by HITECH and its implementing regulations. Notice must be made without any unreasonable delay and no later than 60 days after discovery of the Breach. Business Associate shall cooperate with Covered Entity in meeting the Covered Entity's obligations under HITECH, including the following:
- Investigating any unauthorized access, use, or disclosure of PHI and determine if HITECH notification rules apply.
 - Determining whether there is a significant risk of financial, reputational or other harm to any plan member of the Covered Entity as provided for in HITECH.
 - Determining whether the incident falls under any of the HITECH Breach notification exceptions.
 - Documenting and retaining each HITECH Breach risk assessment and exception analysis, and making this information available to Covered Entity plan members upon request.
- b. Business associate must also identify each individual (if known) whose Unsecured PHI has been or is reasonably believed to have been accessed, acquired, or disclosed during such Breach as required by law, as well as describe in sufficient detail the Breach of Unsecured PHI to assist the Covered Entity in meeting its Breach notification obligations, as referenced in Section 6, under HITECH and its implementing regulations.

27. Permitted Uses and Disclosures by Business Associate.

- a. Agreement. Except as otherwise limited in this Addendum, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
- b. Use for Administration of Business Associate. Except as otherwise limited in this Addendum, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- c. Disclosure for Administration of Business Associate. Except as otherwise limited in this Addendum, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided
- d. that 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 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

28. Obligations of Covered Entity.

- a. Notice of Privacy Practices. Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.
- b. Notification of Changes Regarding Individual Permission. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- c. Notification of Restrictions to Use or Disclosure of PHI. 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 CFR 164.522.
- d. Obligations of Covered Entity under HITECH. Covered entity shall:
- Investigate any unauthorized access, use, or disclosure of PHI and determine if HITECH notification rules apply.

- Determine whether there is a significant risk of financial, reputational or other harm to any plan member of the Covered Entity as provided for in HITECH.
- Determine whether the incident falls under any of the HITECH Breach notification exceptions.
- Document and retain each HITECH Breach risk assessment and exception analysis, and make this information available to Covered Entity plan members upon request.
- Notify each Covered Entity plan member impacted by a HITECH Breach by first class mail (or by other methods applicable under HITECH) without any unreasonable delay and no later than 60 days after discovery of the Breach. The notification will comply with HITECH and its implementing regulations.
- Maintain a log and submit to HHS an annual report of Breaches of Unsecured PHI that impact fewer than 500 individuals under the time frames required by HITECH and its implementing regulations.
- Notify HHS in the event the Breach of Unsecured PHI impacts 500 or more individuals under the time frames required by HITECH and its implementing regulations.
- Notify media when required by HITECH and its implementing regulations.

29. Permissible Requests by Covered Entity.

Except as set forth in Section 5 of this Addendum, Covered Entity 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 Covered Entity.

30. Term and Termination.

a. **Term.** This Addendum shall be effective as of effective date 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 by Business Associate, Covered Entity shall either:

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

c. **Effect of Termination.**

- Except as provided in paragraph ii. of this Section 8.c., upon termination of the services provided to Covered Entity under the 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
- 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. Upon mutual agreement of the parties 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 such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

31. Miscellaneous.

a. **Regulatory References.** A reference in this Addendum to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.

b. **Amendment.** The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, the Security Rule and HIPAA.

d. **Survival.** The respective rights and obligations of Business Associate under Section 8.c. of this Addendum shall survive the termination of the Agreement.

e.

f. **Interpretation.** Any ambiguity in this Addendum shall be resolved to permit Covered Entity to comply with the applicable provisions of the Privacy Rule and Security Rule.

g. **Miscellaneous.** The Addendum constitutes the entire agreement between the parties with respect to the subject matter contained herein.