

**BUSINESS ASSOCIATE AGREEMENT BETWEEN  
Laramie County Government and Springbuk, Inc.**

- 1. Parties.** The Parties to this Business Associate Agreement (“BAA”) are Laramie County Government, whose address is 310 West 19<sup>th</sup> Street, Cheyenne, WY 82001 (“Covered Entity”), as sponsor of Laramie County Government Group Benefit Plan and Springbuk, Inc. (“Business Associate”).
- 2. Purpose of Agreement.** The Business Associate is providing Services to the Covered Entity pursuant to a separate Master Subscription and Professional Services Agreement in place between Covered Entity’s vendor Novo Benefits, LLC (“Underlying Agreement”) and Business Associate, involving disclosure of Protected Health Information (“PHI”) by the Covered Entity or its vendors to Business Associate and may include disclosure of PHI from Business Associate back to Covered Entity. This Agreement seeks to satisfy the requirements for the privacy and security of the transmission of PHI found in 45 CFR Parts 160, 162, and 164 as well as applicable Wyoming state law. Applicable Wyoming state law may include, but is not limited to, Wyo. Stat. Ann. §§ 35-2-605 et seq., 9-2-125 et seq., and applicable rules and regulations. These statutes, rules, and regulations are collectively referred to as the “Privacy and Security Rules.”
- 3. Term of Agreement and Required Approvals.** This Agreement is effective when all Parties have executed it, and all required approvals have been granted. Once this Agreement becomes effective, it shall remain effective until it is terminated under the terms herein.
- 4. Definitions.** Terms used but not otherwise defined shall have the same meaning as the terms in 45 CFR §§ 160.103, 164.304, and 164.501. A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section in effect, or as amended.
  - A. Protected Health Information** shall have the same meaning as defined in 45 CFR § 160.103, limited to the information created, received, transmitted, or maintained in any form or medium by Business Associate from or on behalf of Covered Entity. The definition of “Protected Health Information” includes “Electronic Protected Health Information (“ePHI”) (45 CFR § 160.103). All references to “Protected Health Information” include “ePHI.”
  - B. Individual** shall have the same meaning as the term “individual” in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative, in accordance with 45 CFR § 164.502(g).
  - C. Privacy Rule** shall mean the *Standards for Privacy of Individually Identifiable Health Information* at 45 CFR Part 160 and Part 164, Subparts A and E.
  - D. Security Rule** shall mean the Security Standards at 45 CFR Part 160 and Part 164, Subparts A and C.
  - E. Secretary** shall mean the Secretary of the Department of Health and Human Services or his/her designee.
  - F. HITECH Act** means Title XIII of Public Law 111-5 (the American Recovery and Reinvestment Act).

**5. Responsibilities of Business Associate.** Except as otherwise permitted or required by this Agreement, the Business Associate may only create, receive, maintain, or transmit protected health information received from or on behalf of the Covered Entity as necessary to carry out its obligations under this Agreement as required by law, or to carry out the proper management and administration or legal responsibilities of the Business Associate. Further, the Business Associate agrees to:

- A.** Use reasonably appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to ePHI to prevent any use or disclosure of PHI other than as permitted by law and required by this BAA.
- B.** Prevent use or disclosure of the PHI other than as provided for by this BAA and the Underlying Agreement and implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it receives, maintains or transmits on behalf of the Covered Entity.
- C.** To establish, use, and maintain reasonably appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of all protected health information that the Business Associate creates, receives, maintains, or transmits on behalf of the Covered Entity.
- D.** Report to Covered Entity any use or disclosure of the PHI not provided for by this BAA as well as any security incident of which it becomes aware, including breaches of unsecured PHI as required by 45 CFR 164.410. This section constitutes ongoing notice to Plan Administrator of unsuccessful security incidents like pings on firewalls, port scans, and malware that do not result in unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- E.** In accordance with 45 CFR §§ 164.502(c)(1)(ii) and 164.308(b)(2), to ensure that any subcontractor that the Business Associate uses to create, receive, maintain, or transmit PHI on its behalf agrees to the same restrictions, conditions, and requirements that apply to the Business Associate under the terms of this Agreement.
- F.** Provide access, at the request of 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. Business Associate shall identify the records in its possession that are components of a Designated Record Set and shall consider those records as a Designated Record Set in satisfying its obligation under the BAA. Business Associate shall make such determination in accordance with 45 C.F.R. §164.501.
- G.** To limit its use, disclosure, or requests for protected health information to the extent practicable to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request.

- H.** 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, in order to meet the requirements under 45 C.F.R. 164.526.
- I.** Make internal practices, books, and records relating to the use and disclosure of PHI received from, created or received by Business Associate on behalf of Covered Entity available to the Secretary of HHS, in a time and manner designated by the Secretary of HHS, for purposes of determining Covered Entity's compliance with the Privacy Rule.
- J.** Document 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.
- K.** Provide to Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected 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. Business Associate shall provide an accounting of disclosures in accordance with this section and as required by 42 U.S.C. 17935 if PHI is contained in an Electronic Health Record.
- L.** To notify the Covered Entity of any use or disclosure of protected health information not provided for by this Agreement, any security incident excluding unsuccessful security incidents as defined in Section D above, or any breach of unsecured PHI of which the Business Associate becomes aware.
- M.** To make all protected health information received from the Covered Entity or otherwise created, maintained, or transmitted on behalf of the Covered Entity available to the Covered Entity as necessary for the Covered Entity to comply with an individual's request for access to protected health information under 45 CFR § 164.524, a public records request under Wyo. Stat. Ann. §§ 16-4-201 through 16-4-205, or any other request that may be required by law so long as any proprietary information of Business Associate is sufficiently redacted as determined by Business Associate.
- N.** To make any amendments to PHI in a designated record set held by Business Associate or any subcontractor or agent pursuant to 45 CFR § 164.526. Should the Business Associate receive such request directly, it shall notify the Covered Entity prior to providing any response to the person requesting amendment. Thereafter, the Parties agree to meet to promptly discuss and jointly resolve the request for amendment to the PHI. The Parties' failure to reach an agreement regarding any amendment prior to the timeframes specified in 45 CFR § 164.526 shall be cause to terminate this Agreement and all other contracts between the Parties.
- O.** With respect to any use or disclosure of Unsecured PHI not permitted by the Privacy Rule that is caused solely by Business Associate's failure to comply with one or more of its obligations under this BAA, Covered Entity hereby delegates to Business Associate the responsibility for determining when any such incident is a Breach of Unsecured PHI and

for providing all legally required notices in accordance with the security breach notification requirements set forth in 42 U.S.C. §17932 and 45 C.F.R. Parts 160 & 164 subparts A, D & E, and Business Associate shall pay for the reasonable and actual costs associated with such notifications. In the event of a Breach of Unsecured PHI, without unreasonable delay, and in any event no later than forty-five (45) calendar days after discovery of the Breach of Unsecured PHI, Business Associate shall provide Covered Entity with written notification that includes a description of the Breach of Unsecured PHI, a list of affected Individuals and a copy of the template notification letter to be sent to affected Individuals.

- P. Not make or cause to be made and written fundraising communication or communication about a product or service that is prohibited by 42 U.S.C. §17936 (a) and (b).
- Q. Not directly or indirectly receive remuneration in exchange for any PHI as prohibited by 42 U.S.C. §17935(d).

**6. Responsibilities of Covered Entity.** Covered Entity shall (i) not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rules if carried out by Covered Entity; (ii) be compliant with all applicable laws and regulations pertaining to PHI Covered Entity sends, or directs to be sent, to Business Associate; (iii) not provide access to the PHI to any employee, agent or other designee (including not using or disclosing the PHI for any employment-related action or decision) unless allowable under HIPAA and HITECH; (iv) use PHI for the limited purpose of satisfying its fiduciary obligation with respect to its administration of the group benefit plan; and (v) as necessary, amend its group plan documents as a condition to disclosure of PHI. In addition, the Covered Entity agrees to the following:

- A. Promptly provide the Business Associate with the notice of privacy practices the Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice. If there are any provisions in such notice that may limit Business Associate's use or disclosure of PHI beyond the restrictions set forth in this BAA, Business Associate will only be required to comply with such different or additional restrictions upon specific written agreement to do so.
- B. Promptly provide the Business Associate with notice of any changes in, or revocation of, permission by an individual to use or disclose protected health information, if such changes affect the Business Associate's permitted or required uses and disclosures.
- C. Promptly notify the Business Associate of any restriction to the use or disclosure of protected health information to which the Covered Entity has agreed and which are applicable to the Business Associate, in accordance with 45 CFR § 164.522 and section 13405(a) of Public Law 111-5.
- D. To not request that the Business Associate use or disclose protected health information in any manner that would not be permissible under the Privacy and Security Rules if done by the Covered Entity .

## **7. General Provisions.**

- A. Amendments.** Any changes, modifications, revisions or amendments to this Agreement that are mutually agreed upon by the Parties shall be incorporated by written instrument, executed and signed by all parties to this Agreement. The Parties agree to take action to amend this BAA from time to time as necessary for Covered Entity to comply with the requirements of the Privacy Rule, Security Rule and HIPAA. This BAA can also be modified in accordance with the Amendment provision in the Underlying Agreement.
- B. Mutual Representations and Warranties of the Parties.** Each Party represents and warrants to the other Party that it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized, it has the full power to enter into this BAA and to perform its obligations, it is compliant with all laws and regulations regarding the receipt and/or disclosure of PHI, and that the performance by of its obligations under this BAA have been duly authorized by all necessary corporate or other actions and will not violate any provision of any license, corporate charter, or bylaws; and that neither the execution of this BAA, nor its performance hereunder, will directly or indirectly violate or interfere with the terms of another agreement to which it is a party, or give any governmental entity the right to suspend, terminate, or modify any of its governmental authorities or assets required for its performance hereunder.
- C. De-Identification.** Business Associate may de-identify and use PHI to provide Data Aggregation services to the Covered Entity as permitted by 45 C.F.R. §164.504(e)(2)(i)(B).
- D. Applicable Law/Venue.** The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the Parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.
- E. Assignment/Agreement Not Used as Collateral.** Neither Party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Agreement without the prior written consent of the other Party. The Business Associate shall not use this Agreement, or any portion thereof as collateral for any financial obligation.
- F. Entirety of Agreement.** This Agreement, consisting of eight (8) pages, represents the entire and integrated BAA between the Parties and supersedes all prior and contemporaneous negotiations, representations and Agreements, whether written or oral, regarding the Privacy and Security Rules, and HIPAA.
- G. Indemnification.** Each Party to this agreement shall be responsible for any liability arising from its own conduct. Neither Party agrees to insure, defend or indemnify the other.
- H. Independent Contractor.** The Business Associate shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the Covered Entity for any purpose. Consistent with the express terms of this Contract,

the Business Associate shall be free from control or direction over the details of the performance of services under this Contract. The Business Associate shall assume sole responsibility for any debts or liabilities that may be incurred by the Business Associate in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Business Associate or its agents and/or employees to act as an agent or representative for or on behalf of the Covered Entity or to incur any obligation of any kind on the behalf of the Covered Entity. The Business Associate agrees that no health/hospitalization benefits, workers' compensation, unemployment insurance and/or similar benefits available to the Covered Entity employees will inure to the benefit of the Business Associate or the Business Associate's agents and/or employees as a result of this Contract.

- I. Insurance.** The Business Associate agrees it will carry comprehensive general liability insurance, which includes coverage applicable to this Agreement.
- J. Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with the HIPAA Privacy and Security Rules.
- K. Notices.** All notices arising out of or from the provisions of this Agreement shall be in writing and shall be deemed provided to each respective Party if by personal delivery or by, at least, first class United States mail, postage prepaid. Written notices to the Covered Entity shall be provided to the attention of the Cheyenne-Laramie County Health Department, 100 Central Avenue, Cheyenne, WY 82007.
- L. Notice of Sale or Transfer of the Business Associate.** The Business Associate shall provide the Covered Entity with the earliest possible notice of any sale or transfer or any merger or consolidation of the assets of the Business Associate. Such notice shall be provided in accordance with the notice provision of this Agreement.
- M. No Third-Party Beneficiaries.** Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.
- N. Effect on Underlying Agreement.** Except as relates to the use, security and disclosure of PHI and electronic transactions, this BAA is not intended to change the terms and conditions of, or the rights and obligations of the Parties under, the Underlying Agreement.
- O. Severability.** Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and the Parties may renegotiate the terms affected by the severance.
- P. Sovereign Immunity.** Covered Entity does not waive sovereign immunity by entering into this Agreement and specifically retains immunity and all defenses available to it as

sovereign pursuant to Wyo. Stat. § 1-39-104(a) and all other state or federal law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign immunity. The Parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either Party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

**Q. Authority.** The individual(s) signing this BAA on behalf of Business Associate and Covered Entity are duly authorized representatives of the respective Parties with full power and authority to execute this BAA.

**8. Termination.** This Agreement may be terminated, without cause, by the Covered Entity upon seven (30) days' written notice, or by mutual assent of the Parties, or for cause if the Business Associate materially violates the terms of this Agreement.

**A. Termination of the Underlying Agreement.** Upon termination of the underlying Agreement, 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. Notwithstanding the foregoing, in the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall be entitled to retain such PHI, provided that Business Associate shall extend the protections of this BAA 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.

**B. Termination for Cause.** Upon a material breach of this BAA, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation in accordance with the Underlying Agreement. The Covered Entity will have the right to terminate this BAA if Business Associate does not cure the breach or end the violation in accordance with the timeframes set forth in the Underlying Agreement.

**9. Time is of the Essence.** Time is of the essence in all provisions of this Agreement.

**10. Waiver.** The waiver of any violation of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent violation. Failure to object to a violation shall not constitute a waiver.

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**Signature Page**

**IN WITNESS WHEREOF**, Business Associate and Covered Entity have caused this Agreement to be signed and delivered by their duly authorized representatives, as of the date set forth above.

**LARAMIE COUNTY GOVERNMENT (COVERED ENTITY):**

By: \_\_\_\_\_  
Chairman, Laramie County Commissioners

Date: \_\_\_\_\_

(SEAL)

Attest:

\_\_\_\_\_  
Debra Lee, Laramie County Clerk

**SPRINGBUK, INC. (BUSINESS ASSOCIATE)**

DocuSigned by:  
By: Joy Powell \_\_\_\_\_  
BAD75F3D57214E1...  
Name: Joy Powell \_\_\_\_\_

Title: Chief Operating Officer

2/24/2020

Date: \_\_\_\_\_

**LARAMIE COUNTY ATTORNEY'S OFFICE APPROVAL AS TO FORM**

\_\_\_\_\_  
Gladys Ayokosok, Laramie County Assistant Attorney

2/26/2020  
Date