

LARAMIE COUNTY EMPLOYEES
Service Agreement
With
MII Life Insurance Incorporated d/b/a Further

This Agreement ("the Agreement") is between LARAMIE COUNTY EMPLOYEES ("Employer") and MII Life Insurance, Incorporated dba Further ("Administrator") a Blue Cross Blue Shield of Wyoming vendor partner providing spending account administrative services to BCBS clients. LARAMIE COUNTY EMPLOYEES and Administrator are each sometimes referred to herein as a "Party" and collectively as the "Parties".

1. Term. This Agreement will begin on July 1, 2020 (the "Effective Date") for a 12 month period and shall automatically renew for additional 12 month periods until terminated as described herein.
2. Services and Fees. Administrator agrees to provide the Services described in Exhibit A for the fees described in Exhibit B.
3. Termination. This Agreement may be terminated by either Party at any time, by giving written notice to the other Party at least sixty (60) days prior to the termination date. However, either Party may terminate this Agreement in the event of material breach, subject to a grace period to cure its breach of 30 days. A material breach includes, but is not limited to, (a) the failure to pay any amounts when due under this Agreement, or (b) HIPAA violations.
4. Obligations after Termination. Subject to the provisions set forth in Exhibit A and any Exhibit for Services, Administrator will have no responsibility for providing Services after the termination of this Agreement. Employer will remain responsible for any outstanding fees owed to Administrator.
5. ACH. To the extent Administrator pays claims on behalf of Employer, Employer agrees such payments constitute a loan from Administrator that Employer shall immediately repay and hereby authorizes Administrator to withdraw by Automated Clearing House ("ACH") any funds necessary to cover any such claim payment made by Administrator in a time and amount as mutually agreed upon in writing by the Parties during implementation.
6. Information Disclosure. Employer agrees that Administrator may rely on Employer's designation of third party agents and vendors as Employer may list on Administrator's forms or designate by email as authorization for Administrator to disclose Employer's confidential information, including PHI, to such third parties. Such authorization may be revoked at any time upon written notice to Administrator.
7. Accuracy of Information. Employer agrees that all information supplied to Administrator by Employer will be accurate, timely, and in a format acceptable to Administrator. In performing its obligations under this Agreement, Administrator may rely upon any written or oral instruction or direction from Employer or its employees (including its designated representatives). If and to the extent Administrator acts or fails to act as a result of or based upon any such instruction, direction, or information, Administrator shall be relieved of any claim, loss, damage, or expense arising from its reliance on the same, and the Employer shall indemnify Administrator for any such related loss, damage, claim or expense. Such act or failure to act will not constitute a breach of any obligation of Administrator contained in this Agreement.
8. Indemnification. Each Party to this Contract shall assume the risk of liability arising from its conduct. Neither Party agrees to insure, defend, or indemnify the other. Administrator shall not be an indemnifying Party with respect to or provide indemnification for any losses or claims arising out of or otherwise related to: (a) any access to or use of the Services in combination with any hardware, system, software, network, or other materials or service not provided by or otherwise authorized by Administrator, or (b) any modification to the Services other than (i) by Administrator; or (ii) with Administrator's prior written approval.
9. Limit of Liability. Neither Party shall be liable for any indirect, incidental, special, or consequential punitive or multiple damages, including without limitation any damages resulting from loss of use, loss of business, loss of revenue, loss of profits, or loss of data, arising in connection with this Agreement, even if a Party has been advised of the

possibility of such damages. The aggregate liability of Administrator arising out of or in connection with the performance of Administrator's obligations under this Agreement shall not exceed the greater of \$50,000.00 or the preceding 12 months of fees. The foregoing limitation of liability shall apply to the fullest extent permitted by law.

10. Trademark Use. Employer may not use Administrator's name or logo without Administrator's advance written permission.
11. License and Work Product. Employer agrees nothing contained in this Agreement shall be construed as granting, by implication, estoppel or otherwise, any licenses or rights under any patents or other intellectual property rights. All work product, property, data, documentation, information or materials conceived, discovered, developed or created by Administrator pursuant to this Agreement (collectively, the Work Product) shall be owned exclusively by Administrator.
12. Notices. All notices under this Agreement will be in writing or by email communication to Administrator and Employer at the respective addresses stated on the signature page of this Agreement.
13. Independent Contractor. The Parties make this Agreement and will function as independent contractors and not as an agent of one another. Neither Party will state or imply the contrary to anyone. The employees and agents of each Party will not be treated for any purpose as the agents or employees of the other Party.
14. Disclaimers. Administrator does not render legal, tax or investment advice in connection with the Services provided under this Agreement. Employer will seek the advice of counsel as to matters that might arise in connection with the design, adoption or operation of the Plan. Administrator is not, in any way, to be deemed an insurer, underwriter or guarantor with respect to any benefits payable under the Plan. Nothing herein shall be deemed to constitute Administrator as a party to the Plan or to confer upon Administrator any authority or control respecting management of the Plan, authority or responsibility in connection with administration of the Plan, or responsibility for the terms or validity of the Plan. All discretion and control with respect to the terms, administration or assets of any benefit plan related to the Services will remain with

Employer or with the named fiduciaries under such plan. Employer understands and intends that Administrator shall not be a fiduciary within the meaning of ERISA, common law, or any other federal, state or local law, statute, ordinance, or regulation with respect to the performance of any of the Services. The parties do not intend, nor shall there be, any third-party beneficiary of this Agreement.

15. Force Majeure. Neither Administrator nor Employer will be liable for the non-performance of its obligations under this Agreement if such non-performance is caused by acts of civil or military authority, civil disturbance, war, terrorism, explosions, fires, earthquakes, floods, or other acts of God, or events beyond its reasonable control ("Force Majeure Event").
16. Confidential Information. For the purposes of this Agreement, "Confidential Information" includes the terms of this Agreement and all information in any form that would reasonably be expected to be treated as confidential by the recipient whether or not such information is designated as confidential. Each Party's respective Confidential Information will remain its sole and exclusive property. Confidential Information does not include information or materials if and to the extent such information: (a) is or becomes generally available or known to the public through no fault of the receiving party; (b) was already known by or available to the receiving party, without any confidentiality obligations, prior to the disclosure by the disclosing party; (c) is subsequently disclosed to the receiving party by a third party who is not under any obligation of confidentiality to the party who disclosed the information; or (d) has already been or is hereinafter independently acquired or developed by the receiving party without violating this section or any confidentiality agreement with or other obligation to the party who disclosed the information.
17. Use of Confidential Information. Each Party shall not use or disclose the Confidential Information of the other party other than as expressly permitted by this Agreement. Each party agrees that only its employees who have a need to know the Confidential Information of the other party (and in the case of Administrator, including any affiliates, subcontractors, and vendors providing related services). Except as otherwise provided herein, no party will disclose the other party's Confidential Information to a third party without the prior

written consent of the other party, except that Administrator may use Employer's information in combination with other data, including the disclosure of such information to third parties, provided that no such information is identifiable as relating to the Employer. Any party may disclose the other party's Confidential Information to its legal counsel and auditors. Each Party may retain a copy of all Confidential Information of the other parties for archival purposes.

18. Release of Confidential Information. The receiving party may disclose Confidential Information as required to comply with a valid order or other requirement of a court or other governmental body. Unless legally prohibited from doing so, written notice of such order or requirement will be given to the disclosing party promptly after being subject to any such order or requirement and if practicable, in advance of the required disclosure. The receiving party will reasonably cooperate at the disclosing party's expense, with efforts by the disclosing party to seek a modification of the disclosure requirement and/or a confidentiality agreement or protective order governing the disclosing.
19. Governing Law and Venue. The parties mutually understand and agree this Agreement shall be governed by and interpreted pursuant to the laws of the State of Wyoming. If any dispute arises between the parties from or concerning this Agreement or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the District Court of the State of Wyoming, First Judicial District, sitting at Cheyenne, Wyoming. This provision is not intended nor shall it be construed to waive Employer's governmental immunity as provided in this Agreement.
20. Severability. The provisions of this Agreement are severable. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions will remain in full force and effect.
21. Assignment. This Agreement may not be assigned or transferred without the prior written consent of the other Party. Notwithstanding the foregoing, Administrator may subcontract to perform services without consent of the other Party.
22. Amendment. This Agreement may not be amended without mutual consent of the Parties. Notwithstanding the foregoing, Administrator may
- amend this Agreement upon written notice if necessary to comply with rule, regulation or mandate or applicable law or to otherwise enhance services.
23. Patriot Act Compliance. The Parties acknowledge that, in accordance with Section 326 of the U.S.A. Patriot Act, Administrator is required to obtain, verify, and record information that identifies each person or legal entity that establishes a business relationship or opens an account with Administrator. Employer agrees that it will provide Administrator with such information as Administrator may request in order for Administrator to satisfy its requirements under the U.S.A. Patriot Act. Employer warrants that all employee information provided to Administrator is accurate and has been verified by the Form I-9 Employment Eligibility Verification process as required by applicable law.
24. Warranties and Covenants. Employer warrants and covenants that: (a) they have the full legal right and authority to enter into and perform this Agreement, (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary action, including the right to deliver all data and other information to Administrator hereunder, and to authorize the use of such data as provided herein (the "Employer Data"); (c) the Employer Data does not violate or infringe the intellectual property rights of any person or entity; (d) this Agreement has been duly executed and delivered by Employer and constitutes the legal, valid, and binding obligation of Employer, enforceable against it in accordance with its terms; (e) Employer is not currently a party to any agreement with any third party that is in conflict with the terms of this Agreement, and Employer has obtained all necessary consents and approvals related to this Agreement; and (f) Employer and its participants will comply with all applicable laws and regulations and with the restrictions and the terms and conditions contained in this Agreement or as otherwise specified by Administrator.
25. Disclaimer of Warranties. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, ADMINISTRATOR DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER WARRANTIES WHATSOEVER, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON- INFRINGEMENT, ACCURACY

OR NATURE OF ANY DATA, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE.

acceptance of all terms, conditions and obligations of this Agreement. Acceptance will be effective on the Effective Date of this Agreement.

26. Waiver. No course of dealing, failure to strictly enforce, or waiver of a default of any provision of this Agreement shall be construed as a waiver of such provision unless it is in writing and signed by both parties.

[Signature Page to Follow]

27. Entire Agreement. This Agreement (including any Exhibits) constitutes the entire, final agreement between Administrator and Employer, regarding the subject matter, and supersedes any previous agreement between the Parties with respect to the administrative services for the Plan. An executed copy of this Agreement may be delivered by one or more parties electronically, and such delivery shall be considered valid, binding and effective for all purposes.

28. No Party Considered Drafter. Each Party has negotiated at arm's length and had the opportunity to engage legal counsel of its choice. Accordingly, no Party shall be deemed the drafter of this Agreement, and this Agreement shall be construed as though jointly prepared by the Parties, without favor to any Party.

29. TCPA. Further generally receives employee telephone numbers from Employer through enrollment files or the online employer access portal. Telephone numbers are provided directly to Employer by employees with the understanding that Further may contact them, and Employer does not obtain telephone numbers through a service or a third party. Further may contact employees by telephone for HSA-related purposes or to perform services under the Agreement. Telephone numbers may be updated periodically by employees, and Further will honor do not call requests. With regard to Further's use of employee telephone numbers, Employer agrees to retain employee enrollment records confirming authorization for uses pursuant to this Agreement for a period of at least 4 years or as otherwise set forth in the Telephone Consumer Protection Act (TCPA) and, upon request, will provide such records to Further in a timely manner.

30. Acceptance of Terms. Payment to Further by Employer (either through direct check or Account transaction) made at least seven (7) days following receipt of this Service Agreement for services described in the Agreement will signify Employer's

IN WITNESS WHEREOF, the Parties hereto hereby execute this Agreement, as of the Agreement Effective Date.

LARAMIE COUNTY EMPLOYEES:

By: _____

Name: _____

Title: _____

Send Notices to:

LARAMIE COUNTY EMPLOYEES
310 W 19TH ST STE 320
CHEYENNE, WY 82001

**MII, LIFE INSURANCE, INCORPORATED
D/B/A FURTHER:**

By: Ryan McArton

Name: Ryan McArton

Title: Chief Compliance Officer

Send Notices to:

Further
Compliance Officer
PO Box 64193
St. Paul, MN 55164

LIST OF EXHIBITS

Exhibit A	Service Descriptions
Exhibit B	Administrative Fees
Exhibit C	Business Associate Agreement

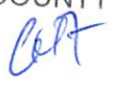
RECEIVED AND APPROVED AS
TO FORM ONLY BY THE
DEPUTY LARAMIE COUNTY
ATTORNEY 

Exhibit A-1

BENEFIT PLAN SERVICES SCHEDULE

Employer has established one or more of the following Benefit Plans for purposes of providing reimbursement of certain eligible expenses incurred by covered employees ("Covered Individuals"):

- A Code Section 105 Health Flexible Spending Arrangement ("Health FSA")
- A Code Section 129 Dependent Care Flexible Spending Arrangement ("Dependent Care FSA")
- A Code Section 105 Health Reimbursement Arrangements ("HRA") as described in IRS Notice 2002-45.

Employer has asked Administrator to assist it with its administrative obligations under one or more of the Benefit Plans identified above. The specific Benefit Plan related administrative assistance that may be provided by Administrator under this Schedule ("Services") is described below. Only those Services chosen by Employer and for which the applicable fee is paid, as set forth in Exhibit B attached hereto (or, as set forth below with respect to additional requested services), will be provided by Administrator.

Article I. Standard Benefit Plan Services

1.1 Employer is solely responsible for the operation and maintenance of the Benefit Plans. It is Employer's sole responsibility and duty to ensure that each Benefit Plan complies with the applicable laws and regulations, and Administrator's provision of Services under this Agreement does not relieve Employer of this obligation.

1.2 Administrator will provide Administrator's standard plan documentation and forms to be used by Employer as a template for creating the governing documents for the Benefit Plans. Such standard documents and forms have been prepared in accordance with the standard of care set forth in the Agreement but are general in nature and do not take into consideration facts and circumstances specific to Employer and Employer's Benefit Plans. Consequently, Administrator makes no warranties and representations that such documents and forms will comply with applicable law as they relate to the Benefit Plans. Administrator is not responsible for making any changes to the documents.

1.3 Employer will provide to Administrator timely, accurate and complete information relating to the Covered Individuals and the Benefit Plans as is necessary for Administrator to satisfy its obligations hereunder, including any reporting obligations set forth in Section 111 of the Medicare Modernization and SCHIP Extension Act of 2007 ("Section 111 Reporting"). Employer will provide such information in a format identified by Administrator. Employer understands and agrees that Administrator may rely on all information provided to it by Covered Individuals and/or Employer in accordance with this Agreement as true and accurate without further verification or investigation. In the event that Administrator must take additional manual steps to resolve errors created by Employer's failure to satisfy its obligations under this Section 1.3, such additional correction efforts may be billed on an hourly basis.

1.4 Administrator will make reimbursement forms available on its website for distribution to Covered Individuals. Administrator is only obligated to process requests for reimbursements submitted to Administrator in accordance with the instructions set forth on Administrator's reimbursement forms. Administrator will process requests for reimbursements in accordance with applicable law, its standard operating procedures, the terms of the Benefit Plan to the extent that such terms are provided to Administrator and are consistent with Administrator's standard operating procedures. If Administrator denies a request for reimbursement, Administrator will review the 1st level appeal if the Plan provides for 2 levels of appeal. Employer will be responsible for the final determination on the final level of appeal

1.5 If a request for reimbursement is approved by Administrator in accordance with its obligations set forth herein, Administrator will disburse benefits as soon as reasonably possible after Administrator approves the claim.

1.6 If Employer chooses Electronic Payment Card Services (as set forth in the Schedule), then Electronic Payment Card Services will be provided in accordance with Article II of this Exhibit.

1.7 If it is discovered that a Covered Individual was overpaid, or the Covered Individual fails to substantiate an Electronic Payment Card Transaction as required by applicable rules and regulations, Administrator will make reasonable attempts to collect repayment of overpaid or unsubstantiated Electronic Payment Card claims or offset the ineligible payment against any claims for future eligible expenses in accordance with applicable rules and regulations. Administrator will make no more than 2 requests for repayment from the Covered Individual. If repayment or offset is not made, Administrator will notify Employer. Employer is responsible for taking any additional action required by law (e.g., including such amounts in income). Administrator shall have no obligation to request repayment or offset to the extent such overpayment is a result of Employer's acts or omissions, such payments were authorized by Employer or Employer has failed to satisfy its funding obligations.

1.8 Upon request, Administrator will conduct nondiscrimination testing required under the Code (collectively referred to as the "Nondiscrimination Tests") to the extent Administrator provides related services. To the extent necessary, Administrator will provide Employer with a form requesting data necessary to complete the Nondiscrimination Tests. Administrator will complete the Nondiscrimination Tests and provide a report summarizing its interpretations of the results, which is based solely on the information provided by Employer and/or information maintained by Administrator in accordance with this Service Schedule, within a reasonable amount of time after receipt of the requested information.

1.9 Employer may review written reports summarizing the Benefit Plan activities from the previous month at any time through Administrator's on-line portal. Employer is responsible for reviewing the reports submitted by Administrator and notifying Administrator of any errors of which it is aware within a reasonable period of time after reviewing them.

Article II. Electronic Payment Card Services

2.1 At Employer's request and payment of all applicable fees, the card service provider may make an electronic payment card (Card) available to Covered Individuals through which eligible expenses may be paid in accordance with the following terms:

(i) The Card Service Provider will provide an Electronic Payment Card to each Card Recipient. Employer understands and acknowledges that Card Service Provider issues Cards based solely on the information provided by Employer and neither Administrator nor the Card Service Provider has an obligation to verify or confirm that recipients of Cards (Card Recipients) are Covered Individuals.

(ii) Card Recipients must agree to use the Card in accordance with the terms of the Cardholder Agreement that accompanies the Card. The Card will be deactivated if the Covered Individual fails to use the Card in accordance with the Cardholder Agreement or as otherwise required by applicable law.

(iii) The Card may be used by Card Recipients to pay for eligible expenses (as defined by applicable law and the applicable Benefit Plan documents to the extent consistent with Administrator's standard operating procedures) in accordance with the applicable rules and regulations.

(iv) Administrator will require substantiation of expenses paid with the Card in accordance with the requirements set forth in the Code, its standard operating procedures, and/or other applicable guidance. Any additional substantiation practices required by Administrator will result in additional fees hereunder. The

Card will be deactivated if the Card Recipient fails to provide the requested substantiation in a timely manner as determined by Administrator in accordance with Federal guidelines.

(vi) All Cards will be deactivated on the date this Agreement is terminated, the date that Employer fails to satisfy its reimbursement obligations as set forth herein, and/or as necessary to prevent fraud or abuse (as determined by Administrator).

(vii) If Cards are issued to Covered Individuals in accordance with this Schedule, then Employer agrees to comply with the terms of the Debit Card Settlement Agreement or such other agreement provided by Administrator's card service provider.

Exhibit A-2

POP SERVICES SCHEDULE

Article I. Standard POP Plan Services

1.1 Employer is solely responsible for the operation and maintenance of its POP Plan. It is Employer's sole responsibility and duty to ensure that each POP Plan complies with the applicable laws and regulations, and Administrator's provision of Services under this Agreement does not relieve Employer of this obligation.

1.2 Administrator will provide Administrator's standard POP plan documentation to be used by Employer as a template for creating the governing documents for the POP Plans. Such standard documents and forms have been prepared in accordance with the standard of care set forth in the Agreement but are general in nature and do not take into consideration facts and circumstances specific to Employer and Employer's POP Plan. Consequently, Administrator makes no warranties and representations that such documents and forms will comply with applicable law as they relate to the POP Plan. Administrator is not responsible for making any changes to the documents.

1.3 Upon request, Administrator will conduct nondiscrimination testing required under the Code (collectively referred to as the "Nondiscrimination Tests") to the extent Administrator provides related services.

1.4 To the extent necessary, Administrator will provide Employer with a form requesting data necessary to complete the Nondiscrimination Tests. Administrator will complete the Nondiscrimination Tests and provide a report summarizing its interpretations of the results, which is based solely on the information provided by Employer and/or information maintained by Administrator in accordance with this Service Schedule, within a reasonable amount of time after receipt of the requested information.

EXHIBIT B

FEES

1. LARAMIE COUNTY EMPLOYEES will pay Administrator the following fees for the services Administrator provides under the Agreement.

<u>ESA Annual Administrative Fee</u>	\$0.00	for the Plan
<u>POP-Only Administrative Fee</u>	\$0.00	for the Plan
<u>DCAP Annual Administrative Fee</u>	\$0.00	for the Plan
<u>ESA Monthly Participant Fee*</u>	\$3.00	per participant
<u>DCAP Monthly Participant Fee*</u>	\$3.00	per participant

*The monthly per participant fee is based on the number of participants in the Plan as of the last day of the prior month.

2. Administrator will submit a bill to Employer by the 15th day of each month for the Monthly Per Participant Fee owed for such month.
3. The fees shall become payable twenty (20) calendar days after the receipt of invoice. If payments are not received in a timely manner, Administrator may suspend processing of claims until payment is received.
4. Requests for bill adjustment from Employer after sixty (60) calendar days will not be accepted.
5. If inaccurate information is communicated to Administrator that necessitates duplicate communication or record keeping functions, Administrator reserves the right to charge Employer its prevailing hourly rate, which is currently \$200.00 hr.
6. Plan nondiscrimination testing is available upon request for an additional fee.

EXHIBIT C

BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (“BAA”) between **MII Life Insurance Incorporated d/b/a Further (“Business Associate”)** and Employer (“**Covered Entity**”) is attached to and made part of the Employer Flexible Benefits Plan Service Agreement with MII Life Insurance Incorporated (the “**Agreement**”) as such agreement may be renewed from time to time. Business Associate and Covered Entity agree that this BAA replaces any prior Business Associate Agreements.

Covered Entity and Business Associate mutually agree to comply with the requirements of the implementing regulations of the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”), as modified by the Health Information Technology for Economic and Clinical Health Act (the “**HITECH Act**”). Specifically, the “**HIPAA Rules**” means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 106 and Part 164. The HIPAA Privacy Rule is the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and 164, subparts A and E. The HIPAA Security Rule is the HIPAA Security Standards at 45 CFR Parts 160 and 164, Subpart C. The HIPAA Breach Notification Rule is the Notification in the Case of Breach of Unsecured Protected Health Information, as set forth at 45 CFR Part 164, subpart D. Business Associate recognizes and agrees that it is obligated by law to meet the applicable provisions of the HIPAA Rules.

I. Privacy of Protected Health Information.

A. Permitted Uses and Disclosures. Business Associate is permitted to use and disclose Protected Health Information (“**PHI**”) that it creates or receives on Covered Entity’s behalf or receives from Covered Entity (or another business associate of Covered Entity) and to request PHI on Covered Entity’s behalf (collectively, “**Covered Entity’s PHI**”) only as follows:

1. Functions and Activities on Covered Entity’s Behalf. To perform functions, activities, services, and operations on behalf of Covered Entity, consistent with the Privacy Rule. More specifically, except as otherwise limited in this BAA, Business Associate is permitted to use and disclose PHI to perform the functions, activities, or services for, or on behalf of, Covered Entity as specified in the above-named 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 Covered Entity.

2. Business Associate’s Operations. For Business Associate’s proper management and administration or to carry out Business Associate’s legal responsibilities, provided that, with respect to disclosure of Covered Entity’s PHI:

a. The disclosure is Required by Law; or

b. Business Associate obtains reasonable assurance (and, upon request of Covered Entity, provides written evidence of such assurance) from any person or entity to which Business Associate will disclose Covered Entity’s PHI that the person or entity shall:

i. Hold Covered Entity’s PHI in confidence and use or further disclose Covered Entity’s PHI only for the purpose for which Business Associate disclosed Covered Entity’s PHI to the person or entity or as Required by Law; and

ii. Immediately (and no later than five (5) business days after the suspected or known breach) notify Business Associate (who shall in turn notify Covered Entity in accordance with Section IV of this BAA) of any instance of which the person or entity becomes aware in which the confidentiality of Covered Entity’s PHI was breached.

B. Minimum Necessary and Limited Data Set. Business Associate's use, disclosure or request of PHI shall utilize a Limited Data Set if practicable. Otherwise, Business Associate shall, in its performance of the functions, activities, services, and operations specified in Section I.A.1 above, make reasonable efforts to use, to disclose, and to request of a Covered Entity only the minimum amount of Covered Entity's PHI reasonably necessary to accomplish the intended purpose of the use, disclosure or request. In addition, Business Associate agrees to implement and follow appropriate minimum necessary policies in the performance of its obligations under this BAA.

C. Prohibition on Unauthorized Use or Disclosure. Business Associate shall neither use nor disclose Covered Entity's PHI, except as permitted or required by this BAA or in writing by Covered Entity or as Required by Law. This BAA does not authorize Business Associate to use or disclose Covered Entity's PHI in a manner that will violate 45 C.F.R. Part 164, Subpart E "Privacy of Individually Identifiable Health Information" ("**Privacy Rule**") if done by Covered Entity, except as set forth below.

1. **Sale of PHI Prohibited.** Business Associate shall not directly or indirectly receive any remuneration in exchange for Covered Entity's PHI.

2. **Marketing of PHI.** Business Associate shall not directly or indirectly receive any remuneration for any use or disclosure of PHI for marketing purposes.

D. Information Safeguards.

1. **Privacy of Covered Entity's PHI.** Business Associate shall develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of Covered Entity's PHI. The safeguards must reasonably protect Covered Entity's PHI from any intentional or unintentional use or disclosure in violation of the Privacy Rule, 45 CFR Part 164, Subpart E and this BAA, and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this BAA. Business Associate shall document such safeguards, and, upon request, provide such safeguards to Covered Entity.

2. **Security of Covered Entity's Electronic PHI.** Business Associate shall develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI that Business Associate creates, receives, maintains, or transmits on Covered Entity's behalf as required by the Security Rule, 45 C.F.R. Part 164, Subpart C. Business Associate also shall develop and implement policies and procedures and meet the Security Rule documentation requirements. Upon request, Business Associate shall provide such policies and procedures to Covered Entity.

E. Subcontractors and Agents. Business Associate shall require any of its subcontractors and agents, to which Business Associate is permitted by this BAA or in writing by Covered Entity to disclose Covered Entity's PHI, in writing to provide reasonable assurance that such subcontractor or agent will comply with the same privacy and security safeguard obligations with respect to Covered Entity's PHI that are applicable to Business Associate under this BAA.

II. Compliance with Transaction Standards. If Business Associate conducts in whole or part electronic Transactions on behalf of Covered Entity for which DHHS has established Standards, Business Associate shall comply, and shall require any subcontractor or agent it involves with the conduct of such Transactions to comply, with each applicable requirement of the Transaction Rule, 45 C.F.R. Part 162.

III. Individual Rights.

A. Access. Business Associate shall, within ten (10) business days following Covered Entity's request, make available to Covered Entity or, at Covered Entity's direction, to an individual (or the individual's personal representative) for inspection and obtaining copies Covered Entity's PHI about the individual that is in Business Associate's custody or control, consistent with the requirements of 45 CFR Section 164.524, so that Covered

Entity may meet its access obligations under 45 C.F.R. § 164.524. Business Associate shall make such information available in an electronic format where directed by Covered Entity.

B. Amendment. Business Associate shall, upon receipt of written notice from Covered Entity, promptly amend or permit Covered Entity access to amend any portion of Covered Entity's PHI, so that Covered Entity may meet its amendment obligations under 45 C.F.R. § 164.526.

C. Disclosure Accounting. Business Associate agrees to 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. Business Associate agrees to provide to Covered Entity or an Individual an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528, in a prompt and reasonable manner consistent with the HIPAA regulations.

D. Restriction Agreements and Confidential Communications. Business Associate shall comply with any agreement that Covered Entity makes that either (i) restricts use or disclosure of Covered Entity's PHI pursuant to 45 C.F.R. § 164.522(a), or (ii) requires confidential communication about Covered Entity's PHI pursuant to 45 C.F.R. § 164.522(b), provided that Covered Entity notifies Business Associate in writing of the restriction or confidential communication obligations that Business Associate must follow. Covered Entity will promptly notify Business Associate in writing of the termination of any such restriction agreement or confidential communication requirement and, with respect to termination of any such restriction agreement, instruct Business Associate whether any of Covered Entity's PHI will remain subject to the terms of the restriction agreement.

IV. Privacy Obligation Breach and Security Incidents.

A. Reporting.

1. Privacy Breach. Business Associate shall report to Covered Entity any use or disclosure of Covered Entity's PHI not permitted by this BAA or in writing by Covered Entity. In addition, Business Associate shall report, following discovery and without unreasonable delay, but in no event later than five (5) business days following discovery, any "Breach" of "Unsecured Protected Health Information" as these terms are defined by the Breach Notification Regulation. In the event of a breach, Business Associate shall perform a risk assessment to determine whether there is a low probability that the PHI has been compromised pursuant to the Breach Notification Regulation. Business Associate shall provide documentation relating to the risk assessment when Business Associate reports the Breach to Covered Entity. If the Covered Entity determines that notice to the individual(s), media or HHS is required, Business Associate shall be responsible for any and all costs relating to such notice. Business Associate shall cooperate with Covered Entity in investigating the Breach and in meeting the Covered Entity's obligations under the Breach Notification Regulation, and any other security breach notification laws.

2. Any such report will include the identification (if known) of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach. If Business Associate discovers that there has been a HIPAA Breach, then except when prohibited by law, Business Associate shall notify Covered Entity without unreasonable delay and in no event not later than thirty (30) business days of the discovery. Business Associate's report will at least:

- a.** Identify the nature of the non-permitted access, use or disclosure, including the date of the Breach and the date of discovery of the Breach;
- b.** Identify Covered Entity's PHI accessed, used or disclosed as part of the Breach (e.g., full name, social security number, date of birth, etc.);
- c.** Identify who made the non-permitted access, use or disclosure and who received the non-permitted disclosure;

d. Identify what corrective action Business Associate took or will take to prevent further non-permitted access, uses or disclosures;

e. Identify what Business Associate did or will do to mitigate any deleterious effect of the non-permitted access, use or disclosure; and

f. Provide such other information, including a written report, as Covered Entity may reasonably request.

B. Security Incidents. The Security Rules define a "Security Incident" as an attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system, involving electronic PHI ("e-PHI") that is created, received, maintained or transmitted by or on behalf of a Party. Since the Security Rules include attempted unauthorized access, use, disclosure, modification or destruction of information, Covered Entity needs to have notice of attempts to bypass electronic security mechanisms. The Parties recognize and agree that the significant number of meaningless attempts to, without authorization, access use, disclose, modify or destroy e-PHI will make a real-time reporting requirement formidable for Business Associate. Therefore, the Parties agree to the following reporting procedures for Security Incidents that result in unauthorized access, use, disclosure, modification or destruction of information or interference with system operations ("**Successful Security Incidents**") and for Security Incidents that do not so result ("**Unsuccessful Security Incidents**").

For Unsuccessful Security Incidents, the Parties agree that this paragraph constitutes notice of such Unsuccessful Security Incidents. By way of example, the Parties consider the following to be illustrative of Unsuccessful Security Incidents when they do not result in actual unauthorized access, use, disclosure, modification or destruction of e-PHI or interference with an information system:

- Pings on Business Associate's firewall,
- Port scans,
- Attempts to log on to a system or enter a database with an invalid password or username,
- Denial-of-service attacks that do not result in a server being taken off-line, and
- Malware (worms, viruses, etc.)

Business Associate shall report to Covered Entity any Successful Security Incidents of which Business Associate becomes aware. Business Associate shall make this report upon Covered Entity's request, except if any such security incident resulted in a disclosure of Covered Entity's PHI not permitted by this BAA, Business Associate shall make the report in accordance with this Section IV.

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 BAA.

D. Termination of BAA.

1. **Right to Terminate for Breach.** Covered Entity may terminate this BAA (as well as any other agreement to which this BAA is attached) if it determines, in its sole discretion, that Business Associate has breached any provision of this BAA and upon written notice to Business Associate of the breach, Business Associate fails to cure the breach within ten (10) days after receipt of the notice. Covered Entity may exercise this right to terminate this BAA by providing Business Associate written notice of termination, stating the failure to cure the breach of the BAA that provides the basis for the termination. Any such termination will be effective immediately or at such other date specified in Covered Entity's notice of termination. If for any reason Covered Entity determines that Business Associate has breached the terms of this BAA and such breach has not been cured, but Covered Entity determines that termination of the BAA is not feasible, Covered Entity may report such breach

to the U.S. Department of Health and Human Services.

2. Termination Upon Expiration or Termination of Related Agreement(s). In the event any underlying agreement(s) to which this BAA is attached expires or is terminated, this BAA shall also be terminated, effective as the date of the expiration or termination of the underlying agreement(s).

3. Obligations on Termination.

a. Return or Destruction of Covered Entity's PHI as Feasible. Upon termination or other conclusion of this BAA, Business Associate shall, if feasible, return to Covered Entity or destroy Covered Entity's entire PHI in whatever form or medium, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of Covered Entity's PHI. Business Associate shall require any subcontractor or agent, to which Business Associate has disclosed Covered Entity's PHI as permitted by Section I.E of this BAA, to if feasible return to Business Associate (so that Business Associate may return it to Covered Entity) or destroy all of Covered Entity's PHI in whatever form or medium received from Business Associate, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of Covered Entity's PHI, and certify to Business Associate that all such information has been returned or destroyed. Business Associate shall complete these obligations as promptly as possible, but not later than thirty (30) days following the effective date of the termination or other conclusion of this BAA.

b. Procedure When Return or Destruction Is Not Feasible. Business Associate shall identify any of Covered Entity's PHI, including any that Business Associate has disclosed to subcontractors or agents as permitted by Section I.E of this BAA, that cannot feasibly be returned to Covered Entity or destroyed and explain why return or destruction is infeasible. Where Covered Entity agrees that such return or destruction is infeasible, Business Associate shall limit its further use or disclosure of such information to those purposes that make return or destruction of such information infeasible. If Covered Entity does not agree, subparagraph 3.a. above shall apply. Business Associate shall require such subcontractor or agent to limit its further use or disclosure of Covered Entity's PHI that such subcontractor or agent cannot feasibly return or destroy to those purposes that make the return or destruction of such information infeasible. Business Associate shall complete these obligations as promptly as possible, but not later than thirty (30) days following the effective date of the termination or other conclusion of this BAA

c. Continuing Privacy and Security Obligation. Business Associate's obligation to protect the privacy and safeguard the security of Covered Entity's PHI as specified in this BAA will be continuous and survive termination or other conclusion of this BAA.

E. Indemnity. Business Associate shall indemnify and hold harmless Covered Entity and any Covered Entity affiliate, officer, director, employee or agent from and against any claim, cause of action, liability, damage, fines, penalties, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted use or disclosure of Covered Entity's PHI or other breach of this BAA by Business Associate or any subcontractor or agent under Business Associate's control.

V. General Provisions.

A. Inspection of Internal Practices, Books, and Records. Business Associate shall make its internal practices, books, and records relating to its use and disclosure of Covered Entity's PHI available to Covered Entity

and to DHHS to determine Covered Entity's and Business Associate's compliance with the Privacy Rule, 45 C.F.R. Part 164, Subpart E, and the Security Rule.

B. Definitions. The terms "Covered Entity," "Electronic Protected Health Information," "Protected Health Information," "Standard," "Trading Partner Agreement," and "Transaction" have the meanings set out in 45 C.F.R. § 160.103. The term "Standard Transaction" has the meaning set out in 45 C.F.R. § 162.103. The term "Required by Law" has the meaning set out in 45 C.F.R. § 164.103. The terms "Health Care Operations," "Payment," "Research," and "Treatment" have the meanings set out in 45 C.F.R. § 164.501. The term "Limited Data Set" has the meaning set out in 45 C.F.R. § 164.514(e). The term "use" means, with respect to PHI, utilization, employment, examination, analysis or application within Business Associate. The terms "disclose" and "disclosure" mean, with respect to PHI, release, transfer, providing access to or divulging to a person or entity not within Business Associate. For purposes of this BAA, Covered Entity's PHI encompasses Covered Entity's Electronic PHI. Any other capitalized terms not identified in this BAA will have the meanings set forth in the HIPAA Rules.

C. Amendment to BAA. Upon the compliance date of any final regulation or amendment to final regulation promulgated by DHHS that affects Business Associate's use or disclosure of Covered Entity's PHI or Standard Transactions, this BAA will automatically amend such that the obligations imposed on Business Associate remain in compliance with the final regulation or amendment to final regulation.

D. Conflicts. In the event that this BAA is made part of another agreement between the parties, the terms and conditions of this BAA will override and control any conflicting term or condition of such other agreement, provided that this BAA shall not override any rights of the parties to terminate any such other agreement in accordance with the terms and conditions of such other agreement.

E. Severability. If any provision of this BAA is held illegal, invalid, prohibited or unenforceable by a court of competent jurisdiction, that provision shall be limited or eliminated in that jurisdiction to the minimum extent necessary so that this BAA shall otherwise remain in full force and effect and enforceable.

F. No third party beneficiary. Nothing expressed or implied in this BAA or in the Contract is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assignees of the parties, any rights, remedies, obligations, or liabilities whatsoever.