

**BUSINESS ASSOCIATE AGREEMENT**  
***[For use with Covered Entity]***

This Agreement (“Agreement”) is effective on the date signed between City of La Crosse (“Covered Entity”) and The Horton Group, Inc. by and on behalf of its employees, Sub-Agents, Agency Representatives, or Contract Representatives, as those terms may be used in the underlying Agency Agreement(s) (hereinafter collectively referred to as the “Agency”). The purpose of this Agreement is to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160 to 164) (“HIPAA”).

**Privacy of Protected Health Information**

**I. PERMITTED AND REQUIRED USES AND DISCLOSURES**

Agency is permitted or required to use or disclose Protected Health Information it creates or which it receives from the Covered Entity or on the Covered Entity’s behalf only as follows:

A. Functions and Activities on Covered Entity’s Behalf. Agency is permitted to request, use and disclose the minimum necessary Protected Health Information it creates or which it receives from the Covered Entity or on the Covered Entity’s behalf to perform the following functions:

1. Quoting:

- (a) Gather census, financial, benefit and medical information needed to provide a quote or renewal;
- (b) Obtain competitive quotes;
- (c) Present proposal to customer;
- (d) Submit quotes, including quotes with medical information in various formats over the telephone, by facsimile, or via electronic mail; and
- (e) Run quotes on electronic quote systems.

2. Enrollment:

- (a) Conduct or assist with presentation of enrollment meetings, which may be followed by question and answer sessions or individual consultations;
- (b) Review and submit applications to insurance carriers;

- (c) Provide service on enrollment issues;
- (d) Submit new business cases, which may include employer and employee applications;
- (e) When applications on file with insurance carrier are incomplete, such as with missing medical or non- medical information, research and respond to list of questions presented by insurance carrier to obtain missing items;
- (f) Submit benefit changes to insurance carrier;
- (g) Verify enrollment information;
- (h) Assemble, review and submit information to insurance carrier necessary to process requests for riders;
- (i) Forward enrollment applications, change applications and termination requests;
- (j) Address or investigate enrollment or billing issues; and
- (k) Validate enrollment and/or enrollment information.

3. Customer Service:

- (a) Provide service on billing and claims issues;
- (b) Review financial information on an ongoing basis to provide recommendations and assistance to customer;
- (c) Verify "paid to" date;
- (d) Call various insurance carrier departments with questions customer may have;
- (e) Assess prior carrier deductible credit;
- (f) Contact insurance carrier to correct an Individual's address, date of birth, or other personal information;
- (g) Verify eligibility of dependents, spouse and new hires;
- (h) Support factual investigation on issues pertaining to eligibility;
- (i) Request materials and supplies from insurance carrier and deliver to customer;

- (j) Receive from customer such materials as applications, change forms, and premium payments, and deliver to insurance carrier;
- (k) Correct spelling of names;
- (l) Investigate and verify any other insurance information, such as may be needed to evaluate coordination of benefits issues;
- (m) Verify Medicare information; and
- (n) Verify over age dependent information.

4. Renewal and related functions:

- (a) Support general renewal activity, including present renewal to individual health plan or to employer group;
- (b) Receive and review information contained in commission payment statements distributed by insurance carrier; and
- (c) Submit requests for policy terminations.

5. Those other functions as otherwise specifically set forth in this Agreement or other written agreements during their term that may exist between Covered Entity and Agency, or functions necessary to use electronic systems in development at insurance carrier that will support Agency activity, such as electronic enrollment, electronic billing, and electronic customer service.

B. Agency Operations. Agency is permitted to use and disclose the minimum necessary Protected Health Information it creates or which it receives from the Covered Entity or on the Covered Entity's behalf as follows:

- 1. Use of Protected Health Information. Agency may use Protected Health Information it creates or which it receives from the Covered Entity or on the Covered Entity's behalf as necessary for Agency's proper management and administration or to carry out Agency's legal responsibilities.
- 2. Disclosure of Protected Health Information. Agency may disclose the minimum necessary amount of Protected Health Information as necessary for Agency's proper management and administration or to carry out Agency's legal responsibilities only if:
  - (a) The disclosure is required by law; or
  - (b) Agency obtains reasonable assurance from any person or organization to which Agency will disclose such Protected Health Information that such person or organization will:

- (i) Hold such Protected Health Information in confidence and use or further disclose it only for the purpose for which Agency disclosed it to the person or organization, or as required by law; and
  - (ii) Promptly notify Agency (who will in turn promptly notify Covered Entity) of any instance of which the person or organization becomes aware in which the confidentiality of such Protected Health Information was breached.
3. Data Aggregation Services. If specifically authorized by the Covered Entity, the Agency may provide data aggregation services relating to the health care operations of the Covered Entity.
  4. Disclosure to Plan Sponsor. When acting on Covered Entity's behalf, Agency may not disclose Protected Health Information to the Plan Sponsor unless the Agency has the written authorization of the Individual or the Plan Sponsor provides Agency with certification that it satisfies the requirements of 45 C.F.R. Part 164.504(f).
  5. Minimum Necessary Information. In any instance when Agency uses, requests or discloses Protected Health Information under this Agreement or in accordance with other agreements that exist between Covered Entity and Agency, Agency may use or disclose only the minimum amount of Protected Health Information necessary to accomplish the intended purpose, except that Agency will not be obligated to comply with this minimum necessary limitation with respect to:
    - (a) Disclosure to or request by a Health Care Provider for treatment;
    - (b) Use for or disclosure to an individual who is the subject of Covered Entity's Protected Health Information, or that individual's personal representative;
    - (c) Use or disclosure made pursuant to an authorization compliant with 45 C.F.R. §164.508 that is signed by an individual who is the subject of Covered Entity's Protected Health Information to be used or disclosed, or by that individual's personal representative;
    - (d) Disclosure to the United States Department of Health and Human Services ("HHS") in accordance with this Agreement;
    - (e) Use or disclosure that is required by law; or
    - (f) Any other use or disclosure that is excepted from the minimum necessary limitation as specified in 45 C.F.R. §164.502(b)(2)

6. Use by Workforce. Agency shall advise members of its workforce of their obligations to protect and safeguard Protected Health Information. Agency shall take appropriate disciplinary action against any member of its workforce who uses or discloses Protected Health Information in contravention of this Agreement.
- C. Subcontractors and Agents. If Agency is permitted by the underlying Agency Agreement to appoint subcontractors, Sub-Agents, Agency Representatives or Contract Representatives (as those terms may be defined in any underlying Agency Agreement), this paragraph will apply. Agency will require any of its subcontractors and agents, other than those employed by Agency, to whom Agency provides Protected Health Information to provide reasonable assurance that subcontractor or agent will comply with the same privacy and security obligations as Agency with respect to such Protected Health Information.
  - D. Information Safeguards. Agency must develop, implement, maintain and use a written information security program that contains the necessary administrative, technical and physical safeguards that are appropriate in light of Agency's size and complexity in order to achieve the safeguarding objectives detailed in Social Security Act §1173(d) (42 U.S.C. § 1320d-2(d)), 45 C.F.R. Part 164.530(c), the HITECH Act and any other implementing regulations issued by the U.S. Department of Health and Human Services, as such may be amended from time to time, to preserve the integrity and confidentiality of and to prevent non-permitted or violating use or disclosure of Protected Health Information created or which it received from Covered Entity or on the Covered Entity's behalf. Agency will document and keep these safeguards current. Agency shall notify Covered Entity should Agency determine it is unable to comply with any such law, regulation or official guidance. Further, Agency shall comply with any applicable state data security law. Agency shall provide Covered Entity with such information concerning such safeguards as Covered Entity may from time to time request for the purpose of determining Agency's compliance with this Agreement. Upon reasonable advance notice, Agency shall provide Covered Entity access to Agency's facilities used for maintenance or processing of Protected Health Information, and to its books, records, practices, policies and procedures concerning the use and disclosure of Protected Health Information, in order to determine Agency's compliance with this Agreement. In furtherance of compliance with the foregoing requirements, Agency shall:
    1. Maintain a privacy policy and procedure for Agency's organization, which must identify an officer of the organization that is responsible for enforcement.
    2. All employees of Agency that handle or access Protected Health Information must undergo ongoing training regarding the safeguarding of Protected Health Information.

3. Ensure that any third party that Agency contracts with or relies upon for the provision of services to Covered Entity also maintains a framework for compliance with the HIPAA and Security rules.
  4. Implement a contingency plan for responding to emergencies and/or disruptions in Agency's business, to ensure, to the extent reasonable, that services provided are not interrupted and the integrity and safety of all Protected Health Information is maintained.
  5. Establish and implement a data back up program that ensures Agency's ability to provide Covered Entity with retrievable, exact copies of Protected Health Information, upon Covered Entity's request.
  6. Document how security breaches that are discovered will be addressed.
  7. Maintain technology policies and procedures that ensure the protection of Protected Health Information on hardware and software utilized by Agency.
  8. Maintain all Protected Health Information received and created in paper form in a secure location with restricted access.
  9. Utilize encryption for the electronic transmission of Protected Health Information to Covered Entity and/or to any third party, as directed by Covered Entity or as required for the provision of services to Covered Entity.
  10. To the extent that Agency stores, processes, and/or transmits cardholder data (e.g. credit card numbers and other related information, as such term is defined by the Payment Card Industry, (PCI) Data Security Standards), Agency shall comply with all PCI Data Security Standards.
- E. Security Policies. Agency shall maintain security policies that comply with all applicable laws and regulations. Covered Entity has the right to request a copy of Agency's security policies.

## II. PROHIBITIONS ON UNAUTHORIZED REQUESTS, USE OR DISCLOSURE

- A. Agency will neither use nor disclose Covered Entity's Protected Health Information it creates or receives from Covered Entity or from another Business Associate of Covered Entity, except as permitted or required by this Agreement or as Required by law or as otherwise permitted in writing by Covered Entity. This Agreement does not authorized Agency to request, use or disclose, maintain or transmit Protected Health Information that will violate 45 C.F.R. Parts 160-164.
- B. Agency will not develop any list, description or other grouping of individuals using Protected Health Information received from or on behalf of Covered Entity,

except as permitted by this Agreement or in writing by Covered Entity. Agency will not request, use or disclose any list, description or other grouping of individuals that is derived using such Protected Health Information, except as permitted by this Agreement or in writing by Covered Entity.

### III. COMPLIANCE WITH STANDARD TRANSACTIONS

If Agency conducts in whole or part Standard Transactions on or after October 16, 2003, for or on behalf of Covered Entity, Agency will comply, and will require any subcontractor or agent involved with the conduct of such Standard Transactions to comply, with each applicable requirement of 45 C.F.R. Part 162.

Agency further agrees to comply with any changes to requirements of HIPAA and any regulations promulgated thereunder, governing the exchange of information between Agency and the Covered Entity.

### IV. PROTECTED HEALTH INFORMATION ACCESS, AGREEMENT AND DISCLOSURE ACCOUNTING

- A. Access. Agency will promptly, upon the request of the Privacy Official of Covered Entity, make available to Covered Entity any Protected Health Information about an Individual which Agency created or which it received from Covered Entity or on the Covered Entity's behalf and that is in Agency's custody or control, so that Covered Entity may meet its access obligations pursuant to and required by applicable law, including but not limited to 45 C.F.R. Part 164.524.

Agency will not respond directly to an Individual's request to access his or her Protected Health Information held in the Agency's Designated Record Set. Agency will refer the Individual to the Covered Entity's Privacy Official so that Covered Entity's Privacy Official can coordinate and prepare a timely response to the Individual.

- B. Amendment. Agency will, upon receipt of notice from Covered Entity's Privacy Official, promptly amend or permit Covered Entity access to amend, any portion of the Protected Health Information which Agency created or which it received from Covered Entity or on the Covered Entity's behalf, pursuant to and required by applicable law, including but not limited to 45 C.F.R. Part 164.526.

Agency will not respond directly to an Individual's request for an amendment of his or her Protected Health Information held in the Agency's Designated Record Set. Agency will refer the Individual to Covered Entity's Privacy Official so that Covered Entity's Privacy Official can coordinate and prepare a timely response to the Individual.

- C. Disclosure Accounting. So that Covered Entity may meet its disclosure accounting obligations pursuant to and required by applicable law, including but not limited to 45 C.F.R. Part 164.528:

1. Disclosure Tracking. Agency will promptly report to Covered Entity for each disclosure, not excepted from disclosure accounting under Section III.C.2 below, that Agency makes to Covered Entity or a third party of Protected Health Information that Agency creates or which it receives from the Covered Entity or on the Covered Entity's behalf:
  - (a) the disclosure date;
  - (b) the name and (if known) address of the person or entity to whom Agency made the disclosure;
  - (c) a brief description of the Protected Health Information disclosed; and
  - (d) a brief statement of the purpose of the disclosure (items a-d, collectively, the "disclosure information"). For repetitive disclosures Agency makes to the same person or entity (including Covered Entity) for a single purpose, Agency may provide:
    - (i) the disclosure information for the first of these repetitive disclosures;
    - (ii) the frequency, periodicity or number of these repetitive disclosures; and
    - (iii) the date of the last of these repetitive disclosures.
  - (e) Agency further shall provide any additional information, to the extent required by the HITECH Act or any regulation adopted pursuant thereto.
  
2. Exceptions from Disclosure Tracking. Agency need not report disclosure information or otherwise account for disclosures of Protected Health Information that this Agreement or Covered Entity in writing permits or requires in the following circumstances:
  - (a) for the purpose of treatment activities, payment activities, or health care operations (except where such recording or accounting is required by the HITECH Act), and as of the effective dates of any such requirements;
  - (b) to the Individual who is the subject of the Protected Health Information disclosed, to that Individual's personal representative or to another person or entity authorized by the Individual;
  - (c) to persons involved in that Individual's health care or payment for health care;



- (d) for notification for disaster relief purposes;
- (e) for national security or intelligence purposes;
- (f) to law enforcement officials or correctional institutions regarding inmates; or
- (g) disclosed in a limited data set.

Agency need not report any disclosure of Protected Health Information that was made before April 14, 2003.

Agency will not respond directly to an Individual's request for an accounting of disclosures. Agency will refer the Individual to Covered Entity's Privacy Official so that Covered Entity's Privacy Official can coordinate and prepare a timely accounting to the Individual.

However, when Agency is contacted directly by an individual based on information provided to the individual by Covered Entity, Agency shall make the accounting of disclosures available directly to the individual, but only if required by the HITECH Act or any related regulations.

- D. Confidential Communications. Agency will promptly, upon receipt of notice from Covered Entity's Privacy Official, send an Individual's communications to the identified alternate address. Agency shall comply with any agreement Covered Entity makes that restricts use or disclosure of Covered Entity's Protected Health Information pursuant to 45 C.F.R. §164.522(a), provided that Covered Entity notifies Agency in writing of the restriction obligations that Agency must follow. Covered Entity will promptly notify Agency in writing of the termination or modification of any confidential communication requirement or restriction agreement.
- E. Disclosure to U.S. Department of Health and Human Services. Agency shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from Covered Entity (or Protected Health Information it created or which it received by Agency on behalf of Covered Entity) available to the Secretary of the United States Department of Health and Human Services (the "**Secretary**"), for purposes of determining Covered Entity's compliance with 45 C.F.R. Parts 160 and 164. Unless the Secretary directs otherwise, Agency shall promptly notify Covered Entity of Agency's receipt of such request, so that Covered Entity can assist in compliance with that request.

## V. BREACH OF PRIVACY OBLIGATIONS

- A. Reporting. Agency will report to Covered Entity: (i) any use or disclosure of Protected Health Information (including Security Incidents) not permitted by this

Agreement or in writing by the Covered Entity; (ii) any Security Incident; (iii) any Breach, as defined in the HITECH Act; or (iv) any other breach of a security system, or the like, as such may be defined under applicable law (collectively a "Breach"). Agency will promptly, without unreasonable delay, make the report to Covered Entity after Agency learns of such Breach. Agency shall cooperate with Covered Entity in investigating the Breach and in meeting Covered Entity's obligations under the HITECH Act, and any other security breach notification law or regulatory obligations.

1. **Report Contents.** To the extent such information is available Agency's report will at least:
  - (a) Identify the nature of the Breach, including the date of the Breach and the date of discovery of the Breach;
  - (b) Identify the Protected Health Information used or disclosed, and provide an exact copy or replication of the Protected Health Information, as appropriate, in a format reasonably requested by Covered Entity, and to the extent available;
  - (c) Identify who made the Breach or received the Protected Health Information disclosure;
  - (d) Identify what corrective action Agency took or will take to prevent further Breaches;
  - (e) Identify what Agency did or will do to mitigate any deleterious effect of the Breach; and
  - (f) Provide such other information, including a written report, as Covered Entity may reasonably request.
  
2. **Examples of Security Incidents.** Covered Entity requires prompt notification from Agency if Agency experiences any Security Incidents that impact the confidentiality, integrity or availability of Covered Entity data or information systems. Below are some examples:
  - (a) Agency's information systems are exposed to malicious code, such as a virus or worm, and such code could be transmitted to Covered Entity's data or systems.
  - (b) Unauthorized access is granted or obtained to servers or workstations that contain Covered Entity data or Agency discovers that Covered Entity data is being used, copied or destroyed inappropriately.

- (c) Agency experiences an attack or the compromise of a server or workstation containing Covered Entity information requiring that it be taken offline.
    - (d) Unauthorized access or disclosure has occurred involving Protected Health Information, which is an obligation under the HIPAA Privacy Rule.
  - 3. Unsuccessful Security Incidents. Except as noted in Section V(E) below, the parties acknowledge and agree that this section constitutes notice by Agency to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to Covered Entity shall be required. "Unsuccessful Security Incidents" shall include, but not be limited to, pings or other broadcast attacks on Agency's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of Protected Health Information.
  - 4. Breach of Unsecured Protected Health Information. A Breach of Unsecured Protected Health Information includes any Breach as defined in the HITECH Act or regulations adopted pursuant thereto.
  - 5. Medicare Vendor Reporting Requirements. To the extent that Agency is subject to any Center for Medicare and Medicaid ("CMS") incident reporting requirements (including applicable timeframes for such reporting) as detailed in the services agreement between Covered Entity and Agency (including any amendments, exhibits or addenda), Agency shall comply with all such reporting requirements, in addition to those imposed hereby.
- B. Breach. Without limiting the rights of the parties elsewhere set forth in the Agreement or available under applicable law, if Agency materially breaches its obligations under this Agreement, Covered Entity may, at its option:
- 1. Exercise any of its rights of access and audit under Section I(D). or IX(J) of this Agreement;
  - 2. Require Agency to submit to a plan of monitoring and reporting, as Covered Entity may determine appropriate to maintain compliance with this Agreement. Covered Entity shall retain the right to report to the Secretary any failure by Agency to comply with such monitoring and reporting; or
  - 3. Immediately and unilaterally terminate the Agreement, without penalty to Covered Entity or recourse to Agency, and with or without an opportunity to cure the breach. Covered Entity's remedies under this Section and set

forth elsewhere in this Agreement shall be cumulative, and the exercise of any remedy shall not preclude the exercise of any other. In for any reason Covered Entity determines that Agency has breached the terms of this Agreement and such breach has not been cured, but Covered Entity determines that termination of this Agreement is not feasible, Covered Entity may report such breach to HHS.

- C. Mitigation. Agency agrees to mitigate to the extent practicable, any harmful effect that is known to Agency of any security incident related to Protected Health Information or any use or disclosure of Protected Health Information by Agency in violation of the requirements of this Agreement.

## VI. OBLIGATIONS UPON TERMINATION

- A. Return or Destruction. Upon termination, cancellation, expiration or other conclusion of the underlying Agency Agreement, Agency will, if feasible, return to Covered Entity or destroy all Protected Health Information, in whatever form or medium (including in any electronic medium under Agency's custody or control), that Agency created or which received from Covered Entity or on the Covered Entity's behalf, including all copies of and any data or compilations derived from and allowing identification of any individual who is a subject of the Protected Health Information.

Agency will complete such return or destruction as promptly as possible, but not later than 120 days after the effective date of the termination, cancellation, expiration or other conclusion of the underlying Agency Agreement. Agency will identify any Protected Health Information that Agency created or which it received from the Covered Entity or on the Covered Entity's behalf that cannot feasibly be returned to Covered Entity or destroyed, and will limit its further use or disclosure of that Protected Health Information to those purposes that make return or destruction of that Protected Health Information infeasible. Within such 120 days, Agency will certify in writing to Covered Entity that such return or destruction has been completed, will deliver to Covered Entity the identification of any Protected Health Information for which return or destruction is infeasible and, for that Protected Health Information, will certify that it will only use or disclose such Protected Health Information for those purposes that make return or destruction infeasible.

- B. Continuing Privacy Obligation. Agency's obligation to protect the privacy of the Protected Health Information it created or which it received from the Covered Entity or on the Covered Entity's behalf will be continuous and survive termination, cancellation, expiration or other conclusion of this Agreement.

## VII. OBLIGATIONS OF COVERED ENTITY

Provisions for Covered Entity to Inform Agency of Privacy Practices and Restrictions.

- A. Covered Entity shall notify Agency of any limitation (s) in its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. Part 164.520, to the extent that such limitation may affect Agency's use or disclosure of Protected Health Information.
- B. Covered Entity shall notify Agency of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Agency's use or disclosure of Protected Health Information.
- C. Covered Entity shall notify Agency of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. Part 164.522, to the extent that such restriction may affect Agency's use or disclosure of Protected Health Information.

#### VIII. PERMISSIBLE REQUESTS BY COVERED ENTITY

Covered Entity shall not request Agency to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA if done by Agency, except as permitted pursuant to the provisions of Section I.B.

#### IX. GENERAL PROVISIONS

- A. Definitions. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms set forth in 45 C.F.R. Part 164.501 and 45 C.F.R. Part 103.
- B. Automatic Agreement to Conform with New Law or Regulations. From time to time local, state or federal legislative bodies, boards, departments or agencies may enact or issue laws, rules, or regulations pertinent to this Agreement. In such event, Agency agrees to immediately abide by all said pertinent laws, rules, or regulations and to cooperate with Covered Entity to carry out any responsibilities placed upon Covered Entity or Agency by said laws, rules, or regulations, subject to Agency's right to terminate this Agreement with thirty (30) days' advance written notice to Covered Entity.
- C. Conflicts. The terms and conditions of this Agreement will override and control any conflicting term or condition of any other existing agreement between the parties. All non-conflicting terms and conditions of the other agreement remain in full force and effect. This Agreement is not intended to confer any rights upon Agency in addition to those set forth in the underlying Agency Agreement.
- D. Owner of Protected Health Information. Covered Entity is the exclusive owner of Protected Health Information created or which it used under the terms of the Agreement.

- E. Record Retention. Agency agrees to retain all information required by 45 C.F.R. Parts 164.524(e) and 540(j) for a period of no less than six (6) years (or longer, if state law requires). At the end of such retention period, Agency shall contact Covered Entity to determine whether the retained information will be returned to the Covered Entity or destroyed.
- F. Subpoenas. Agency agrees to relinquish to Covered Entity control over subpoenas Agency receives with regard to Protected Health Information belonging to Covered Entity.
- G. Disclosure of De-identified Data. The process of converting Protected Health Information to De-identified Data (DID) is set forth in 45 C.F.R. Part 164.514. In the event that Covered Entity provides Agency with DID, Agency shall not be given access to, nor shall Agency attempt to develop on its own, any keys or codes that can be used to re-identify the data.
- H. Creation of De-identified Data. In the event Agency wishes to convert Protected Health Information to DID, it must first subject its proposed plan for accomplishing the conversion to Covered Entity for Covered Entity's approval, which shall not be unreasonably withheld, provided such conversion meets the requirements of 45 C.F.R. Part 164.514.
- I. Assignment/Subcontract. Subject to the applicable Sub-Agent or other similar clause in the underlying Agency Agreement, Covered Entity shall have the right to review and approve any proposed assignment or subcontracting of Agency's duties and responsibilities arising under the Agreement, as it relates to the creation or use of Protected Health Information (or DID if applicable).
- J. Audit. Covered Entity shall have the right to audit and monitor all applicable activities and records of Agency to determine Agency's compliance with the requirements relating to the creation or use of Protected Health Information (and DID, if applicable) as it relates to the privacy and security sections of this Agreement.
- K. Third-Party Beneficiaries. The parties agree that there are no intended third party beneficiaries under this Agreement.
- L. Indemnity. Agency will 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, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted or violating use or disclosure of Protected Health Information or other breach of this Agreement by Agency or any subcontractor, agent, person or entity under Agency's control.
  - I. Right to Tender or Undertake Defense. If Covered Entity is named a party in any judicial, administrative or other proceeding arising out of or in

connection with any non-permitted or violating use or disclosure of Protected Health Information or other breach of this agreement by Agency or any subcontractor, agent, or other person or entity under Agency's control, Covered Entity will have the option at any time either (i) to tender its defense to Agency, in which case Agency will provide qualified attorneys, consultants and other appropriate professionals to represent Covered Entity's interests at Brokers/Producer's expense, or (ii) undertake its own defense, choosing the attorneys, consultants and other appropriate professionals to represent its interests, in which case Agency will be responsible for and pay the reasonable fees and expenses of such attorneys, consultants and other professionals.

2. Right to Control Resolution. Covered Entity will have the sole right and discretion to settle, compromise or otherwise resolve any and all claims, causes of actions, liabilities or damages against it, notwithstanding that Covered Entity may have tendered its defense to Agency. Any such resolution will not relieve Agency of its obligation to indemnify Covered Entity under Section IX.L. of this Agreement.
- M. Interpretation. Any ambiguity in this Agreement shall be resolved to permit the Covered Entity to comply with the requirements of the HIPAA (45 C.F.R. Parts 160 and 164).
- N. Disputes. If any controversy, dispute or claim arises between the parties with respect to this Agreement, the Covered Entity and the Agency shall make good faith efforts to resolve such matters as set forth in the Agency Agreement in a manner consistent with the HIPAA (45 C.F.R. Parts 160 and 164).
- O. Effect on Prior Business Associate Agreements. This Agreement shall supercede any prior business associate agreements between the Covered Entity and Agency.
- P. Termination. This Agreement shall terminate whenever the Covered Entity's Agency Agreement with Agency ends unless earlier terminated in accordance with Section V.B.3 of this Agreement.
- Q. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party. Except for the prohibition on assignment contained in the preceding sentence, this Agreement shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the parties hereto.
- R. Miscellaneous. This Agreement was prepared solely to comply with the requirements of the HIPAA (45 C.F.R. Parts 160 and 164), and unless so provided in such law does not affect or change the legal relationship between Covered Entity and Agency.

IN WITNESS WHEREOF, Covered Entity and Agency execute this Agreement in multiple originals to be effective on the last date written below:

**COVERED ENTITY**

Name: Wendy K. Oestreich

Plan Sponsor on behalf of Covered Entity

Signature: Wendy K. Oestreich  
Title: Director of Human Resources  
Date: 3-18-10

**AGENCY**

Name: Kenneth R. Olson

Signature: Kenneth Olson  
Title: Division President  
Date: February 16, 2010