

SAMPLE CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT made as of the _____ day of _____, 20__ in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, DEPARTMENT OF PROPERTY AND PROCUREMENT, on behalf of the Virgin Islands Health Insurance Board of Trustees (hereinafter referred to as "Government") and _____ (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Government is in need is in need of the services of a Contractor to serve as consultant to the Virgin Islands Health Insurance Board of Trustees (the "Board") and assist in the Board in the administering the Government's health insurance plan, which duties and responsibilities are more particularly described in Addendum I attached hereto; and

WHEREAS, the Government issued RFP No. _____ (the "RFP") dated _____ to solicit proposals from companies interested in serving as consultant to the Board; and

WHEREAS, Contractor submitted a proposal (hereinafter referred to as "Contractor's Proposal") dated _____ in response to the RFP; and

WHEREAS, the Government has accepted Contractor's Proposal and the parties have negotiated and arrived at the agreement set forth in this Contract; and

WHEREAS, the terms of this Contract shall consist of the terms provided herein, the content and provisions of the RFP, the content and provisions of Contractor's Proposal, and the terms of the Addenda attached to this Contract, all of which are fully incorporated herein by reference.

N O W, T H E R E F O R E, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

1. SERVICES

The Contractor will provide the services described in Addendum I (Scope of Services) attached hereto and made a part of this contract.

2. TERM

The term of this contract shall be for a _____ term, commencing _____ and shall terminating _____.

3. COMPENSATION

The Government, in consideration of the satisfactory performance of the services described in Addendum I, agrees to pay the Contractor, in accordance with the provisions of Addendum II to this Contract, a sum not to exceed _____ DOLLARS (\$ _____) per annum.

4. TRAVEL EXPENSES

Contractor will bill separately for out-of-pocket travel expenses incurred by Contractor. Such expenses will include all travel, lodging, and subsistence/meals in accordance with Executive Order No. 439-2008, a copy of which is attached as Addendum IV to this Contract. All travel and travel-related costs will be billed on an actual cost reimbursable basis. Only actual expenses with receipts/documentation will be reimbursed. In the event that Contractor's individual employees incur travel expenses simultaneously for work associated with this assignment and another consulting assignment, these expenses will be pro-rated between the assignments so that in no event will Contractor be reimbursed for more than 100% of its travel expenses. The total reimbursable travel costs under this Contract shall not exceed _____ DOLLARS (\$ _____) per annum, which amount is included in the not-to-exceed annual compensation recited in Section 3 above.

5. RECORDS

The Contractor, when applicable, will present documented, precise records of time and/or money expended under this Contract. At its discretion, the Government may request an audit of Contractor's records. In such event, the audit shall be performed by a third party auditor agreed upon by the Government and Contractor. Contractor shall cooperate with the auditor and provide the documents requested by the auditor with respect to the audit activities. The Government shall bear all costs associated with the audit activity; provided, however, that if the audit activity discloses a deviation of 5% or more between the cost of Contractor's invoices to the Government and the actual costs and fees that should have been invoiced to the Government, then Contractor shall bear all costs associated with the audit activity.

6. PROFESSIONAL STANDARDS

The Contractor agrees to maintain the professional standards applicable to its profession and to consultants doing business in the United States Virgin Islands.

7. INVOICES

Pursuant to the provisions of Addendum II to this Contract, Contractor shall submit monthly invoices documenting services rendered during the applicable period and expenses for which Contractor seeks reimbursement under the Contract.

8. CONFIDENTIALITY

(a) Contractor agrees to preserve the confidentiality of any information it receives from the Government. Contractor agrees, pursuant to 45 CFR 164.502(e), to abide by the "business associate agreement," as attached in Addendum III, whereby the Contractor agrees to take appropriate safeguards to maintain the privacy and security of any protected health information that it may be privileged to in performing its services under this Contract.

(b) All documents, data, reports, and information of any kind and in any form provided to Contractor in the performance of this Contract shall be kept confidential unless written permission is granted by the Government for its release. Contractor is not required to obtain permission from the Government to disclose documents which it is required by law to disclose; provided, however, that Contractor agrees, that, in such a situation, it shall give the Government written notice prior to releasing such information, which written notice shall state the legal basis for the disclosure of the information and shall give the Government sufficient prior notice to, if it determines to do so, challenge the legal basis for the request of information. Any publicity given to the Program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, shall identify the Government as the sponsoring agency and shall not be released without prior written approval from the Government.

9. RETENTION OF RECORDS AND ACCESS BY GOVERNMENT AGENCIES

Contractor, including its employees and subcontractors, shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred under this Contract and make such materials available at their respective offices at all reasonable times, for inspection by authorized officials of the United States Virgin Islands, and concerned Federal agencies. Each subcontract shall include a provision containing the conditions of this Section. This documentation described in this Section shall be retained and preserved for a period of SIX (6) years from the date of expiration or termination of this Contract.

In this regard, the documentation resulting from the services under this Contract will be reviewed by the Government and these agencies, and Contractor will be required to make any corrections required by these agencies as a result of their evaluations, subject to the terms of this Contract. The Government will give Contractor reasonable notice of at least FIVE (5) workdays for any inspection of documentation as set forth herein.

10. **CONTRACTOR PERSONNEL**

- (a) Contractor shall, in writing, provide the Government with the names and qualifications, which shall include references and curriculum vitae, of all Key Personnel and Operating Personnel that will be providing services under this Contract. Contractor's Key Personnel shall be subject to the approval of the Government and may not commence work under this Contract prior to Contractor receiving such approval. Once approved by the Government, Key Personnel may not be removed from the project without the prior approval of the Government. In the event the Government approves the removal of any Key Personnel, Contractor shall provide the name and qualifications, which shall include references and curriculum vitae, of the replacement Key Personnel. All such replacement Key Personnel shall be subject to the approval of the Government.
- (b) "Key Personnel" shall mean an employee of the Contractor serving in a supervisory capacity or in a position that includes any responsibility or authority to make discretionary decisions with respect to the services to be performed under this Contract. Key Personnel includes, but is not limited to, all managers.
- (c) "Operating Personnel" shall mean any person employed by or, pursuant to Section 14 of this Contract, retained as a subcontractor by the Contractor with respect to this Contract who is not in a supervisory capacity that includes the authority to make discretionary decisions with respect to the services to be performed under this Contract and whose duties involve performing the specific tasks described in the scope of service under this Contract under the supervision and direction of the Contractor's Key Personnel.
- (d) All Key Personnel assigned to this Contract shall be employees of the Contractor. Contractor may not subcontract any Key Personnel positions. Pursuant to the provisions of Section 14 of this Contract, Contractor may subcontract and delegate Operating Personnel duties and functions.
- (e) The Government shall have the right to request the removal of any Key Personnel or replacement Key Personnel and any Operating Personnel or replacement Operating Personnel that is an employee of the Contractor. Upon such request, Contractor shall, within THIRTY (30) days, remove the subject individual or individuals from the project and present the names and qualifications, including references and curriculum vitae, of replacement Key Personnel or Operating Personnel, as the case may be. Individuals selected to replace Key Personnel removed at the Government's request must be approved by the Government prior to commencing any work under the Contract. Individuals selected to replace Operating Personnel employees removed at the request of the Government may commence performance of their duties upon the Government's receipt of the individual's name and qualifications.

(f) The Government shall have the right to recommend the removal of any Operating Personnel or replacement Operating Personnel that is a subcontractor of the Contractor. In the event Contractor acts upon the Government's recommendation, it shall within THIRTY (30) days of the removal of an Operating Personnel subcontractor present the names and qualifications, which shall include references and curriculum vitae, of a replacement Operating Personnel subcontractor. Individuals or entities selected to replace an Operating Personnel subcontractor may commence performance of their duties upon the Government's receipt of the name and qualifications of such individuals or entities.

(g) In the event any Key Personnel or Operating Personnel, whether an employee or contractor, assigned to the Contract is removed, Contractor shall re-allocate work assignments and duties as necessary among existing personnel in order for services under the Contract to continue without abatement or interruption until replacement personnel is chosen and commences his or her duties.

11. DOCUMENTS, PRINTOUTS, ETC.

All records, information, analysis, studies, reports, data, financial or statistical data and analysis, computer software, methodologies, and work product of any kind compiled, produced, conducted, or maintained by Contractor in connection with the services performed under this Contract are the property of the Government and shall be returned to the Government upon termination of this Contract. In addition, all documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom and pertaining to this Contract are the property of the Government and shall be turned over to it at the termination of this Contract. The above described data, work product, and materials shall not be used by Contractor or by any other person or entity except upon the written permission of the Government.

Notwithstanding anything in this Contract to the contrary, Contractor shall not be liable in the event the above described material is used by a third party, provided such use is without Contractor's knowledge, without the Contractor's participation, and not the result of the Contractor's negligence. Further, notwithstanding anything in this Contract to the contrary, Contractor shall retain ownership rights to all materials in which it has a legally recognized proprietary interest, including software and working files.

12. LIABILITY OF OTHERS

Nothing in this Contract shall be construed to impose any liability upon Government persons, firms, associations, or corporations engaged by Contractor as servants, agents, independent contractors, or in any other capacity whatsoever, or make the Government liable to any such persons, firms, associations or corporations for the acts, omissions, responsibilities, obligations and taxes of Contractor of whatsoever nature, including but not limited to unemployment insurance and social security taxes for Contractor, its servants, agents or independent contractors.

13. DELEGATION

The Contractor shall not subcontract or delegate any part of the services under this Contract without the prior written approval of the Government, which consent shall not be unreasonably withheld. Contractor warrants that all subcontractor agreements related to this Contract include provisions pursuant to which the subcontractor agrees to preserve the confidentiality of any Government information. Further, Contractor warrants, pursuant to 45 CFR 164.502(e), that all subcontractor performing under this Contract shall execute a "business associate agreement," in the same form as that attached as Addendum III to this Contract, whereby the subcontractor agrees to take appropriate safeguards to maintain the privacy and security of any protected health information that it may be privileged to in performing its services under this Contract.

14. ASSIGNMENT

The Contractor shall not assign any rights under this contract without the prior written approval of the Government.

15. INDEMNIFICATION

Contractor agrees to indemnify, defend and hold harmless the Government and its employees and agents from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges and expenses (including attorney's fees) and causes of action of whatsoever character which the Government may incur, sustain or be subjected to, arising out of or in any way connected to the services to be performed by Contractor under this Contract to the extent caused by Contractor's negligence or to the extent caused by the negligence of Contractor's employees or parties subcontracted by Contractor to perform under this Contract.

16. INDEPENDENT CONTRACTOR

The Contractor shall perform this Contract as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status.

17. GOVERNING LAW

The laws of the United States Virgin Islands shall govern this Contract and jurisdiction with respect to any and all disputes arising under this Contract is exclusive in the courts of the United States Virgin Islands.

18. WAIVERS AND AMENDMENTS

No waiver, modification or amendment of any term, condition or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representative, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

19. ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the parties hereto, and all prior understandings or communications, written or oral, with respect to the subject matter of this Contract, are merged and integrated herein.

20. RIGHT TO WITHHOLD

If work under this Contract is not performed in accordance with the terms hereof, Government will have the right to withhold out of any payment due to Contractor, such sums as the Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, the Government may apply such sums in such manner as the Government may deem proper to secure itself or to satisfy such claims. The Government will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

No such withholding or application shall be made by the Government if and while Contractor gives satisfactory assurance to the Government that such claims will be paid by the Contractor or its insurance carrier, if applicable, in the event that a cause of action giving rise to a potential loss or claim against the Government is not successful.

21. CONDITION PRECEDENT

This Contract is subject to the appropriations and availability of funds and to the approval of the Governor.

22. TERMINATION

Either party will have the right to terminate this contract with or without cause on THIRTY (30) days written notice to the other party specifying the date of termination.

23. PARTIAL TERMINATION

The Government may terminate the performance of work under this Contract in part, whenever the Government shall deem such termination advisable. This partial termination shall be effected by delivering to the Contractor a Notice of Partial Termination specifying the extent to which the term and/or duties under this Contract are terminated and the date upon which such termination becomes effective. The Contractor shall be entitled to receive payment for services provided to the date of termination, including payment for the period of the THIRTY (30) day notice.

24. NON-DISCRIMINATION

No person shall be excluded from participating in, be denied the proceeds of, or be subject to discrimination in the performance of this Contract on account of race, creed, color, sex, religion, national origin or disability.

25. CONFLICT OF INTEREST

- (a) Contractor covenants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.
- (b) Contractor further covenants that it is:
 - (1) Not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature or any other elected territorial official; or an officer or employee of the legislative, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensation on a salary, fee or contractual basis); or
 - (2) a territorial officer or employee and, as such, has:
 - (i) familiarized itself with the provisions of Title 3, Chapter 37, Virgin Islands Code, pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof;
 - (ii) not made, negotiated or influenced this contract, in its official capacity;
 - (iii) no financial interest in the contract as that term is defined in section 1101, (1) of said Code chapter.

26. **EFFECTIVE DATE**

The effective date of this Contract is upon the signature of the Governor.

27. **NOTICE**

Any notice required to be given by the terms of this Contract shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

Government

Commissioner
Department of Property and Procurement
Sub Base, Building No. 1
St. Thomas, Virgin Islands 00802

Chairperson
GESC / Health Insurance Board of Trustees
c/o Chief, Group Health Insurance
Division of Personnel
GERS Complex, 3rd Floor
3438 Kronprindsens Gade
St. Thomas, U.S. Virgin Islands 00802

Contractor

28. **LICENSURE**

The Contractor covenants that it has:

- a. obtained all of the applicable licenses or permits, temporary or otherwise, as required by Title 27 of the Virgin Islands Code; and
- b. familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

29. INSURANCE

Contractor shall provide evidence of professional liability insurance in an amount not less than TWO MILLION DOLLARS (\$2,000,000) per occurrence covering the services under this Contract. Said professional liability insurance shall be on an "Occurrence Basis." This Contract is subject to Contractor providing the Government with a Certificate of Insurance evidencing the professional liability insurance coverage described above. Said Certificate of Insurance shall (i) identify Contractor as the "Named Insured"; (ii) reference, by policy number, the insurance policy, or policies, under which the subject professional liability coverage is issued and state the coverage limits under the subject policy, or policies; (iii) identify the Government as the "Certificate Holder;" and (iv) identify the Government as an "Additional Insured," with respect to the Contract, under the insurance policy, or policies, referenced on the Certificate.

30. DEBARMENT CERTIFICATION

By execution of this contract, the contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The contractor shall include this provision in each of its sub-contracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON-PROCUREMENT." In the event the contractor or sub-contractor misrepresents its eligibility to receive contract awards using federal funds, the contractor or sub-contractor agrees that it shall not be entitled to payment for any work performed under this contract or sub-contract and that the contractor or sub-contractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made. If, during the term of this contract, the contractor shall become ineligible to receive contract awards using federal funds, this contract shall be terminated forthwith for cause and the contractor shall not be entitled to payment for any work performed under this contract or sub-contract after the effective date of such ineligibility.

31. FALSE CLAIMS

Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.

32. NOTICE OF FEDERAL FUNDING

Contractor acknowledges that this Contract may be funded, in whole or in part, by federal funds. Contractor warrants that it shall not, with respect to this Contract, make or present any claim knowing such claim to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a federal offense.

33. NO CONFLICT OF INTEREST; NON-COMPETE

(a) During the term of this Contractor, Contractor will not accept work, enter into a contract, or accept an obligation from any third party, inconsistent or incompatible with Contractor's obligations, or the scope of services rendered for the Government under this Contract. Contractor warrants that there is no other contract or duty on its part inconsistent with this Contract. Contractor agrees to indemnify the Government from any and all loss or liability incurred by reason of the alleged breach by Contractor of any services agreement with any third party.

(b) While providing services to the Government under this Contract and for the period of one (1) year thereafter, unless otherwise agreed to in writing by the Government, Contractor and its employees, officers and directors, shall not, directly or indirectly, engage in any business directly competitive with the Government in regards to the scope of the Government's announced interests, plans, or activities made known to Contractor. Directly or indirectly engaging in any competitive business includes, but is not limited to, (i) engaging in a business as owner (except as a minority shareholder in a publicly traded business), partner, or agent, (ii) becoming an employee of any third party that is engaged in such business, (iii) becoming interested directly or indirectly in any such business; or (iv) facilitating any other party to do any of the foregoing.

34. CONTINGENT FEE PROHIBITED

Contractor warrants that it has not employed or retained any individual, corporation, partnership or other entity, other than a bona fide employee or agent working for Contractor to solicit or secure this Contract, and that it has not paid or agreed to pay any individual, corporation, partnership or other entity, other than a bona fide employee or agent any fee or other consideration contingent on the making of this Contract.

35. HEADINGS NOT CONTROLLING

Section headings in this Contract are for convenience only and shall have no binding force or effect and shall not enter into the interpretation of the Contract.

36. OTHER PROVISIONS

Addendum I (Scope of Services), Addendum II (Compensation), Addendum III (Business Associate Agreement), and Addendum IV (Executive Order No. 439-2008) are incorporated into and made a part of this Contract. In the event of a conflict between the provisions of any Addendum to this Contract and the terms and provisions of this Contract, the terms and provisions of this Contract shall prevail.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

WITNESSES:

GOVERNMENT OF THE VIRGIN ISLANDS

Beverly Joseph, Chairperson Date
GESG / Health Insurance Board of Trustees

Lloyd T. Bough, Jr. Commissioner Date
Department of Property & Procurement

CONTRACTOR

_____ Date

ATTEST: _____ [corporate seal]

APPROVED:

Honorable Kenneth Mapp Date
Governor of the Virgin Islands

APPROVED TO LEGAL SUFFICIENCY
DEPARTMENT OF JUSTICE

By: _____ Date

ADDENDUM I SCOPE OF SERVICES

The Contractor shall, as requested, provide consultation with respect to the Government group medical, prescription drug, dental, vision care and life insurance plans, including operations, claims, reserves and overall progress and development. The Contractor shall be responsible for contacting and obtaining pertinent information and data from the Government's insurance carriers. In addition to consulting with the Government and its insurance carriers, it may become necessary to consult with related parties, including government officials and legal counsel regarding the plan of benefits.

This Contract is a retainer agreement for general consulting services. All consulting services performed by Contractor at the request of the Government shall be covered and funded by the standard monthly retainer. Said consultation services shall include, but shall not be limited to:

- Research and consultation covering all aspects of the Program, including experience, funding arrangements, claims, reserves, benefit design, benefit option(s), and the overall progress and development of the Program in light of current industry trends and in comparison to plans of similar size type in other jurisdictions.
- Obtain pertinent information from the Government's insurance carriers in order to evaluate the current insurance plan and make recommendations as to improvements that will benefit the Government.
- Consult with related parties, including government officials of the Government of the Virgin Islands with respect to the existing cash management infrastructure and established laws, rules, regulations, policies and procedures related to appropriating and allotting funds for government purposes, and more specifically for health insurance and related purposes, insofar as it relates to proposed changes in funding mechanisms in order to determine the best suited funding mechanism(s) for the Government of the Virgin Islands health insurance programs.
- Advise on any changes in the responsibility to the Government of the Virgin Islands, Group Health Insurance Office and/or the Board, as it relates to compliance with the Health Insurance Portability and Accountability Act or any local or federal law or rules and regulations governing the protection of personal health information.
- Communicate research findings and consulting with the Board and the insurance companies and, when necessary, consult with related parties, including government officials and legal counsel regarding plan changes to be made and implemented.
- Renewals. Full consulting services (including meetings) with respect to the annual premium rate renewals for all of the benefit plans including Medical/Rx, Dental, Life Insurance, and VisionCare.
- Year End Accountings. Full consulting services (including meetings) with respect to the annual financial settlements and performance guarantee reconciliations presented by the insurers for all participating benefit plans.
- Medicare Part D Subsidy. Full actuarial consulting services with respect to annual attestation of actuarial equivalence, member communications and subsidy payment.

- Plan Design. Provide ongoing strategic plan design analysis and recommendations, including during the renewal process, to ensure that the program continues to meet the Government's needs in such respects as cost, competitiveness and feasibility. New benefits will be considered and analyzed whenever appropriate to address changing vendor and provider delivery patterns.
- Plan Funding. Provide ongoing strategic plan funding analysis and recommendations, including during the renewal process, to ensure that the program continues to meet the Government's needs in such respects as cost, competitiveness and feasibility. New funding arrangements will be considered and analyzed whenever appropriate.
- Plan Administration. Assist the Government with the ongoing administration of its health and welfare benefits program by providing advice, analysis and assistance with such facets as enrollment, eligibility, financial reporting, plan document interpretation, training, Legislative hearings, consulting invoices.
- Plan Communications. Assist the Government with the ongoing communication of its health and welfare benefits program to participants, providers and administrators by providing advice, analysis and assistance with such facets as Summary Plan Descriptions (SPDs), contracts and announcement letters.
- Regulatory Compliance. Monitor changes in regulatory activity and keep the Government apprised of any actions that will impact the benefit plans.
- Vendor Negotiations and Management. Lead discussions and negotiations with all vendors providing Health and Welfare benefits to plan participants. Lead negotiations with the insurance companies to obtain appropriate adjustments, by assessing whether the carrier's annual administrative fees or retention is consistent with its projection, or if the proposed premium rates, for any plan alternative outlined in the response to the RFP that may be favorably considered by the Board, appear justified based on claims experience. Serve as vendor liaison to ensure plans are operating as agreed upon, vendors are performing up to standard, and service problems are being addressed on a timely basis.
- Ad Hoc Consulting Assistance. Be available on a daily basis to assist all parties at the Government with consulting services in a broad range of areas.
- Plan Analysis. Conduct and provide results of the following plan analysis:
 - Claim audits
 - Detailed and Comprehensive claims analysis
 - Compliance audits
 - Extensive Benchmark studies of specific competitors
 - Eligibility audits
 - Pharmacy benefits/vendor analysis
 - Non-discrimination testing
 - Employee surveys
 - GASB valuation
 - Comprehensive marketing of plans

ADDENDUM III
BUSINESS ASSOCIATE AGREEMENT

The parties hereby agree as follows:

I. Definitions

“CFR” means the Code of Federal Regulations. A reference to a CFR section means that section as amended from time to time; provided that if future amendments change the designation of a section referred to herein, or transfer a substantive regulatory provision referred to herein to a different section, the section references herein shall be deemed to be amended accordingly.

“Designated Record Set” shall have the same meaning as the term “designated record set” in 45 CFR §164.501 and shall include a group of records that is: (i) the enrollment, payment, claims adjudication and case or medical management record systems maintained by or for Covered Entity by Business Associate or (2) used, in whole or in part, by or for Covered Entity to make decisions about Individuals.

“Individual” shall have the same meaning as the term “individual” in 45 CFR §164.501, and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

“Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR parts 160 and 164, subparts A and E.

“Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR §164.501, limited to the information received from or created on behalf of Covered Entity by Business Associate.

“Required by law” shall have the same meaning as the term “required by law” in 45 CFR §164.501.

II. Obligations of Business Associate

Business Associate agrees not to use or disclose Protected Health Information other than as permitted or required by this Agreement or as required by law.

Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

Business Associate agrees to report to Covered Entity any use or disclosure of Protected Health Information other than as provided for by this Agreement within a reasonable time after Business Associate has actual knowledge of such use or disclosure.

Business Associate agrees to include in its agreement with any agent or subcontractor to whom it provides Protected Health Information conditions with respect to such information that are at least as restrictive as those that apply through this Agreement to Business Associate.

If Business Associate maintains Protected Health Information in a Designated Record Set, Business Associate agrees to make available to Covered Entity, within a reasonable time, such information as Covered Entity may require to fulfill Covered Entity's obligations to respond to a request for access to Protected Health Information as provided under 45 CFR §164.524 or to respond to a request to amend Protected Health Information as required under 45 CFR §164.526. Business Associate shall refer to Covered Entity all such requests, which Business Associate may receive from Individuals. If Covered Entity requests Business Associate to amend Protected Health Information in Business Associate's possession in order to comply with 45 CFR §164.526, Business Associate shall effectuate such amendments no later than the date they are required to be made by 45 CFR §164.526; provided that if Business Associate receives such a request from Covered Entity less than ten (10) business days prior to such date, Business Associate will effectuate such amendments as soon as is reasonably practicable.

Business Associate agrees to provide to Covered Entity within a reasonable time such information necessary to permit Covered Entity to respond to a request by an Individual for an accounting of

disclosures as provided under 45 CFR §164.528. Business Associate shall refer to Covered Entity all such requests which Business Associate may receive from Individuals.

Upon reasonable notice, Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the U.S. Secretary of Health and Human Services, or an officer or employee of that Department to whom relevant authority has been delegated, at Covered Entity's expense in a reasonable time and manner, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

III. Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in this Agreement, Business Associate may:

Use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of Covered Entity, as specified in the Base Agreement, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by the Covered Entity.

Disclose Protected Health Information for the proper management and administration of Business Associate or to fulfill any present or future legal responsibilities of Business Associate, provided that such disclosure is either Required by Law or Business Associate obtains reasonable assurances from any person to whom Protected Health Information is disclosed that such person will: (i) keep such information confidential, (ii) use or further disclose such information only for the purpose for which it was disclosed to such person or as Required by Law, and (iii) notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

Use Protected Health Information to provide data aggregation services relating to the health care operations of the Covered Entity, as provided in 45 CFR §164.501.

IV. Obligations of Covered Entity

Covered Entity shall notify Business Associate of any facts or circumstances that affect Business Associate's use or disclosure of Protected Health Information. Such facts and circumstances include, but are not limited to: (i) any limitation or change in Covered Entity's notice of privacy practices, (ii) any changes in, or withdrawal of, an authorization provided to Covered Entity by an Individual pursuant to 45 CFR §164.508; and (iii) any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522.

Covered Entity warrants that it will not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule or is not otherwise authorized or permitted under this [the] Agreement.

V. Effective Date; Termination

The effective date of this Agreement shall be the date the Base Agreement is signed by both parties, and shall terminate as of the date the Base Agreement terminates.

Either party may terminate this Agreement in the event of a material breach by the other party of any provision contained in Sections II through IV above.

Upon termination of this Agreement, Business Associate will return to Covered Entity, or if return is not feasible, destroy, any and all Protected Health Information that it created or received on behalf of Covered Entity and retain no copies thereof. If the return or destruction of the Protected Health Information is determined by Business Associate not to be feasible, or if Business Associate is required by law to retain such information or copies thereof, Business Associate will maintain the Protected Health Information for the period of time required under applicable law, or in accordance with Business Associate's internal record retention schedule as in effect from time to time, whichever is longer, after which time Business Associate shall return or destroy the Protected Health Information.

Business Associate's obligations under Sections II and III above shall survive the termination of this Agreement with respect to any Protected Health Information so long as it remains in the possession of Business Associate.

VI. Other Provisions

To the extent permitted by law, each party agrees to defend, indemnify and hold harmless the other party, its affiliates and each of their respective directors, officers, employees, agents or assigns from and against any and all actions, causes of action, claims, suits and demands whatsoever, and from all damages, liabilities, costs, charges, debts, fines, government investigations, proceedings, and expenses whatsoever (including reasonable attorneys' fees and expenses related to any litigation or other defense of any claims), which may be asserted or for which they may now or hereafter become subject arising in connection with (i) any misrepresentation, breach of warranty or non-fulfillment of any undertaking on the part of the party under this Agreement; and (ii) any claims, demands, awards, judgments, actions, and proceedings made by any person or organization arising out of or in any way connected with the party's performance under this Agreement.

Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

The parties agree that this Business Associate Agreement supplements the Base Agreement between the parties and agree that the terms and conditions thereof are hereby incorporated by reference herein and made a part of hereof to the maximum extent permitted by law. In the event of conflict between the Base Agreement and this Business Associate Agreement, the terms of the Base Agreement shall control unless otherwise prohibited.