

**VILLAGE OF DOWNERS GROVE**  
Report for the Village

<b>SUBJECT:</b>	<b>10/1/2019</b>	<b>SUBMITTED BY:</b>
Employe Benefits Renewal Contracts and Medical Plan Amendments for FY 2020		Dennis Burke Director of Human Resources

**SYNOPSIS**

Resolutions have been prepared to authorize approval of employee benefits renewal contracts and plan amendments for FY 2020.

**STRATEGIC PLAN ALIGNMENT**

The goals for 2017-2019 include *Steward of Financial, Neighborhood and Environmental Sustainability*.

**FISCAL IMPACT**

The Proposed FY20 health insurance budget includes \$1,650,095 for claims administration, stop loss contracts and Wellness Health Initiative. The vendors and contract amounts for FY19 and FY20 are itemized below:

<b>Vendor</b>	<b>Contract Item</b>	<b>FY2019 Amount</b>	<b>FY2020 Amount</b>
Blue Cross/Blue Shield	Medical Claim Administration	\$150,822.00	\$91,834.00
Blue Cross/Blue Shield	Specific and Aggregate Stop Loss	\$568,210.00	\$785,492.00
<b>Subtotal</b>		<b>\$719,032.00</b>	<b>\$877,326.00</b>
National Insurance Services Trust	Life Insurance	\$83,504.00	\$83,504.00
National Insurance Services Trust	Disability Benefits	\$23,746.00	\$23,746.00
TASC	Veba Health Savings	\$28,089.90	\$28,089.90
Humana	Retiree Carve Out	\$288,207.00	\$339,361.00
Eye Med	Vision	\$30,341.76	\$33,294.12
Perspectives	Employee Assistance Program	\$11,000.00	\$9,350.00
<b>Grand Total</b>		<b>\$1,183,920.66</b>	<b>\$1,394,671.02</b>

**RECOMMENDATION**

Approval on the October 1, 2019 consent agenda.

## BACKGROUND

The recommended contracts provide the necessary administration and support for the Village's Health Insurance program, which has a total budget of \$6.8 million as shown in the FY20 Proposed Budget. The budget also describes how the Village has positioned itself well to effectively control health insurance costs and respond to the requirements of the Patient Protection Affordable Care Act.

A summary of the 2020 employee benefits contracts is provided below:

- *Medical Claim Administration* – The Village has a self-funded medical plan and contracts with an outside vendor to provide claim administration on behalf of the Village. Claim administration includes medical and prescription drug claim adjudication, pre-certification and medical case management services. On an annual basis, staff reviews the claim administration services received from the vendor. Also reviewed is the relationship the vendor has with preferred provider organizations (PPO) to ensure the discounts received through the PPO contracts are cost effective to both the employee and the Village. The Village has contracted with Blue Cross/Blue Shield of Illinois for these services since 2011. Blue Cross has provided a renewal quote for 2020 for claims administration. Blue Cross also charges a fee to access their PPO network. The fee is offset by the significant savings the Village realizes through the Blue Cross PPO discounts. The Village made positive changes to the plan design which was recognized by Blue Cross that provided a more positive renewal cost which includes an increase in prescription drug credits. Total annual costs for medical claims administration for 2020, which includes the PPO access fee, are \$91,834. This represents a decrease of \$58,988 from the previous year.
- *Stop Loss Coverage* - The Village purchases stop loss coverage to limit its financial exposure. Stop loss coverage provides insurance for catastrophic medical claims of participants in the Village's group health care plan. There are two types of stop loss coverage, specific and aggregate. Specific stop loss insurance provides a point at which time the insurance company becomes responsible for any claims after an individual insured reaches a pre-determined limit in the contract year. As part of the annual review, staff directs the Village's consultant, the Horton Group, to recommend to the Village the most appropriate point for specific stop loss coverage. The consultant reviews specific claim data on the Village's group and determines if it is cost effective for the Village to take on additional claim exposure. For 2020 the consultant determined that the Village should remain at the current \$150,000 specific stop loss level. Due to a high volume of claims that reached the \$150,000 stop loss level the Village expected an increase in the Stop Loss premium. The Village does obtain alternative quotes on stop loss coverage on an annual basis. Blue Cross's quote for stop loss totals \$785,492 annually. The increase of \$190,282 for stop loss from last year is due to 11 participants in the health plan exceeding the \$150,000 limit. Instead of red lining these four individuals at higher levels of stop loss at a higher rate, the underwriter added to the premium and kept all participants at \$150,000 stop loss, which is in the best interest of the Village's Health Plan.
- *Life Insurance* – Life Insurance is offered as an employee benefit. The premium for Life Insurance for 2020 is \$83,504. This premium reflects no increase from the previous year.
- *Long Term Disability Insurance (LTD)* – LTD is a benefit for all full time employees, except sworn Police or Fire employees, who are covered through the pension plan. Premium costs for FY20 is \$23,746. This premium reflects no increase from the previous year.
- *Vebe Health Savings* – under the Village of Downers Grove medical program, employees are able to participate in a "VEBA Savings Plan" (oftentimes referred to as a health reimbursement account or HRA).

The Village contracts with TASC for administration of the HRA. Administrative Fees for FY20 are \$28,089.90.

- *Retiree Carve Out* – Village employees and their eligible spouses that are on the Village’s Health Insurance Plan go to the Retiree Carve Out when they reach Medicare age at 65 years old. In 2012, the Village through the Broker found a Humana Supplement plan for these retirees is provided thereby removing them from the Village’s Self-Insurance Program. The Village pays the premium and invoices those premiums to the respective retirees. However, those employees that retired prior to the change in Village Ordinance on 9/9/2009 receive credit of 50% of premium. The premium for 2020 is \$339,361. The increase from the previous year is due to eleven (11) new plan participants and a tax of \$16.88 a month per participant.
- *Vision* – The Village provides employees a vision program which is administered by Eye Med Plan of Illinois. Under this program, employees utilize network providers where services are received at discounted rates and benefits are primarily paid in full two years for frames and one year for lenses. Fees for administration of the Eye Med program for 2020 are \$33,294.12. The increase of \$2,952.24 is reasonable according to the Village’s Broker and the quote is for four (4) years to 2023.
- *Employee Assistance Program* – Perspectives provides employee assistance programs for all Village employees. These programs include individual Counseling, Family Counseling, Debt Consolidation, Legal Counseling and more. Because the Village has been a good customer, Perspectives has offered a three (3) year contract through December 31, 2022, as well as a 15% discount. The fee will be \$9,350. This is a decrease of \$1,650 from last year.

## **ATTACHMENTS**

Resolutions

Contracts

**RESOLUTION NO.**

**A RESOLUTION AUTHORIZING AN  
EMPLOYEE ASSISTANCE PROGRAM CONTRACT BETWEEN  
THE VILLAGE OF DOWNERS GROVE  
AND PERSPECTIVES, LTD.**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Contract (the "Agreement"), between the Village of Downers Grove (the "Client") and Perspectives, Ltd. ("Perspectives"), for an employee assistance program effective January 1, 2020 through December 31, 2022, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Contract.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

\_\_\_\_\_  
Mayor

Passed:

Attest: \_\_\_\_\_  
Village Clerk

## CONSULTING AGREEMENT

**THIS CONSULTING AGREEMENT** (the “Agreement”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2019, by and between **PERSPECTIVES LTD.** an Illinois corporation, (“Perspectives”) and the **VILLAGE OF DOWNERS GROVE** (the “Client”).

Perspectives is a consulting firm that provides services related to the development, implementation, and management of Employee Assistance Programs (“EAPs”) and WorkLife services; and

Client intends to implement an integrated EAP & WorkLife program; and

Client desires to retain Perspectives to perform certain services and Perspectives desires to perform such services, all upon the terms and conditions set forth herein;

In consideration of the premises set forth above, the promises and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Client and Perspectives agree as follows:

**1. Term.** Unless sooner terminated as hereinafter provided, the term of this Agreement (the “Term”) will be for three (3) year(s), commencing on **January 1, 2020** and ending on **December 31, 2022**. The Term shall be extended automatically from year to year thereafter (each such extension being called an “Extension Term”), provided, however, that either party may terminate the Term (a) at any time, upon ten (10) days’ written notice, by reason of a material breach of this Agreement by the other party, which breach has not been cured within thirty (30) days of written notice of such breach, or (b) upon ninety (90) days written notice prior to the commencement of any Extension Term.

**2. Services of Perspectives.** During the Term, Perspectives will provide the following EAP and WorkLife services to Client:

A. Implementation Services to be provided in the First Year:

1. Unlimited employee orientation sessions to reach all Client employees.
2. Preparation of a letter describing EAP and WorkLife services that is to be sent by Client to each employee of Client at his or her home address.
3. Design and delivery of an E-Mail Program Announcement flyer.
4. Unlimited brochures, posters and wallet cards for program promotion.

B. Ongoing Annual Training and Program Promotion:

1. Unlimited posters, brochures and wallet cards for program promotion.
2. During each contract year, Perspectives will offer Client up to **ten (10)** pooled hours annually of onsite activity seminars and training seminars related to EAP and WorkLife including training sessions and onsite assistance in defusing and debriefing members involved in unpredictable traumatic workplace events.
3. Perspectives will provide a monthly *Frontline Supervisor* newsletter HR Newsletter
4. Perspectives will provide an Employee Flyer with embedded link to our WorkLife Online site’s monthly feature

5. Perspectives will make available articles of interest on a monthly basis.
  6. Perspectives will be available to participate in Visibility Tables, Health Fairs and other on-site promotional activities.
- C. Services to Employees, Families and Significant Others:
1. Perspectives will provide a professional masters-level staffed Call Center and 24-hour, toll-free access to its master's level clinical staff.
  2. Perspectives will provide assessment and either short-term counseling and/or referral services to Client employees, their spouses, dependents and significant others (collectively referred to as "Participants"), which services will be conducted in up to **eight (8)** sessions per Participant per issue. Brief problem-resolution counseling will be provided to those Participants for whom, in the sole discretion of Perspectives, such counseling will be effective. Referrals, when necessary, will be made to pre-screened providers and will be coordinated with the Client's insurance when appropriate.
  3. Perspectives will provide the Substance Abuse Professional services required under the Department of Transportation regulations.
  4. Perspectives will monitor and provide follow-up services to all Participants for up to one (1) year after the initial meeting of the Participant with Perspectives.
  5. Perspectives will cause to be provided by work/life contractors ("Work/Life Contractors") services as follows:
    - (a) Client employees and their family members will have access to the following WorkLife Online services:
      1. Perspectives *WorkLife Online* will provide access to articles, self-guided assessments, links, calculators, provider databases, skill building courses, expert audio clips and information in the following areas: Emotional Well Being, Child/Elder/Pet/Education, Legal/Financial, Wellness and the Workplace.
      2. Perspectives *WorkLife Online* will also provide:
        - a. A customizable Online Features Page.
        - b. Searchable child/elder/pet care & education/camp/volunteer databases
        - c. LiveConnect (24/7 Instant Messaging w/ degreed WorkLife Consultants for consultation and resource identification in child care, elder care, adoption, camp, college planning, tutoring and other related issues)
        - d. WorkLife Consultants provide match to 3-7 pre-screened WorkLife resources
        - e. Educational material, including "How To Choose" booklets/CD's re: child/elder/pet care
        - f. Monthly WorkLife Webinars

(b) Client employees and their family members will have access to the following WorkLife Telephonic services:

1. Telephonic access with degreed WorkLife Consultants for consultation and resource identification in child care, elder care, adoption, camp, college planning, tutoring and other related issues
2. Convenience Services: Referrals to convenience services such as pet care/sitters, home repair, cleaning services, travel/entertainment services and volunteer activities.

(c) Client employees and their family members will have access to the Legal/Financial Connection program, which will offer the following services:

1. Debt Counseling: Consultation and Referral to consumer credit counseling agencies.
2. Financial Planning Consultation: Free consultation with financial planners regarding taxes, retirement planning and investment strategies.
3. Identity Theft: Telephonic assistance and tools to aid in Identity Theft Recovery.
4. Legal Consultation: Free phone consultation with an attorney and, when necessary, referral to an attorney, which includes a one-half (1/2) hour free in-person consultation and a twenty-five percent (25%) fee discount on normal hourly fees for most issues. At no time will employees be advised on legal issues related to their employment with Client.

D. HR/Management Consultation :

1. Upon the request of a Client supervisor, Perspectives will consult with the supervisor concerning the problems of an individual employee and make recommendations to the supervisor as to how to encourage the employee to participate in the EAP, if Perspectives determines such participation in the EAP is appropriate or advisable.
2. Perspectives will provide consultation in EAP and WorkLife-related HR Policy development (i.e. – DOT, Sexual Harassment, Substance Abuse, Workplace Violence, Disaster Preparedness, Flexible Scheduling, etc.).

E. Additional Services:

1. Perspectives will submit its standard report on the utilization of the EAP & WorkLife services on a semi-annual basis.
2. Perspectives will assign an Account Manager to coordinate the administrative activities of EAP and WorkLife services.

**3. Compensation.**

A. For the services provided for in Section 2 of this Agreement, during the Initial Term, Client agrees to pay Perspectives a **fee of \$2.25** per employee per month. During the

first month of the Initial Term, the fee shall be based upon **346 employees**. This figure will be adjusted on a monthly basis, throughout the life of the Term, to reflect changes in the employee census for the next month if the census changes by five percent (5%) or more.

- B. For the services provided for in Section 2 of this Agreement, for the First Extension Term, and thereafter for each additional Extension Term, Client and Perspectives shall negotiate in good faith as to the fee that Client shall pay Perspectives for each such Extension Term. Any change in the fee for the First Extension Term and any Extension Term thereafter will be memorialized in a written amendment to this Agreement, signed by authorized representatives of Perspectives and Client.
- C. Should the Client want to produce a tailored brochure or wallet card, Client shall promptly reimburse Perspectives for all pre-approved printing expenses incurred on behalf of Client in printing said tailored brochure. Other materials are customizable at no expense to the Client.
- D. Within ten (10) days of the beginning of each month during the Term, Perspectives will submit to Client a statement for one-twelfth (1/12) of the total annual fee. In addition, the statement will include the expenses, if any, Perspectives incurred during the prior month on Client's behalf. Client shall pay Perspectives the fee for the forthcoming month and the expenses, if any, for the prior month, as listed on the statement, within ten (10) days after Client receives the statement.

**4. Additional Obligations of Client.**

In addition to Client's obligations under Section 3 of this Agreement, Client shall:

- A. provide a positive endorsement of the EAP and WorkLife services to supervisors, employees, and their families;
- B. promptly notify Perspectives of any complaints about EAP or Work/Life services and assist in their investigation and resolution; and
- C. provide Perspectives with an accurate employee census on a quarterly basis.

**5. Confidentiality.** The parties recognize and agree that the EAP and WorkLife records of Participants are confidential and shall not be disclosed without the consent of the Participant. The EAP records of Participants shall be retained by Perspectives.

**6. Location and Timing of Services.**

- A. Orientation, training sessions, seminars, and supervisory consultations will be held at locations reasonably designated by Client at times mutually agreed upon by Client and Perspectives.
- B. Assessment and referral services will be provided at the offices of Perspectives or its affiliates or at any other site that Perspectives designates.

**7. Payment for Referral Services.** The costs of any and all services performed by community resources are not the responsibility of Perspectives.

**8. Solicitation of Employees.** During the Term, and for a period of twelve (12) months after its termination for any reason, Client shall not induce, influence, or cause, or seek to induce,



constitute a precedent in the future enforcement of any of the terms and conditions of this Agreement.

- C. **Section Headings.** The headings of Sections and subsections contained in this Agreement are merely for convenience of reference and shall not affect the interpretation of any of the provisions of this Agreement. This Agreement is deemed to have been drafted jointly by the parties, and any uncertainty or ambiguity shall not be construed for or against either party as an attribution of drafting to either party. Whenever the context so requires, the singular shall include the plural and vice versa. All words and phrases shall be construed as masculine, feminine or neuter gender, according to the context. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.
- D. **Severability.** Whenever possible, each provision of this Agreement shall be construed and interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement or the application thereof to any party or circumstance shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition without invalidating the remainder of such provision or any other provision of this Agreement or the application of such provision to other parties or circumstances.
- E. **Entire Agreement.** All discussions, correspondence, understandings, and agreements heretofore had or made between the parties are superseded by and merged into this Agreement, which alone fully and completely expresses the agreement between the parties relating to its subject matter, and the same is entered into with no party relying upon any statement or representation made by or on behalf of any party not embodied in this Agreement. Any modification of this Agreement may be made only by a written agreement signed by both of the parties to this Agreement. Sections 5, 8, 9(B), and 9(C) shall survive the termination of this Agreement or its Term.
- F. **Choice of Law.** This Agreement shall be governed in all respects by the laws of the State of Illinois applicable to agreements made and to be performed entirely within the State of Illinois, without regard to the conflicts of laws principles of the State of Illinois or any other state.
- G. **Force Majeure.** Neither party will be responsible for delays or failures of performance resulting from acts beyond the control of such party. Such acts include acts of God, strikes, lockouts, riots, acts of war, epidemics, government regulations superimposed after the fact, fire, communication line failures, power failures, epidemics, earthquakes, floods, tornadoes, hurricanes, other disasters, or failure or inability of third-party contractors to provide services. Such delays or failures do not include failure to pay invoices when due.
- H. **Authority.** The parties represent and warrant to each other that they have read this Agreement in its entirety, that they understand the terms of this Agreement and understand that the terms of this Agreement are legally enforceable, that they have had ample opportunity to negotiate with each other with regard to all of its terms, that they have entered into this Agreement freely and voluntarily, that they intend to and shall be legally bound by this Agreement, and that they have full power, right, authority, and competence to enter into and execute this Agreement.
- I. **Counterparts.** This Agreement may be executed in any one or more counterparts, each of which shall constitute an original, no other counterpart needing to be produced, and all of which, when taken together, shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of the day and year first above written.

**VILLAGE OF DOWNERS GROVE**

**PERSPECTIVES, LTD.**

By: \_\_\_\_\_

By: *Christopher P. Kunze*

Title: \_\_\_\_\_

Title: Chief Operating Officer

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) is made and entered into between **VILLAGE OF DOWNERS GROVE** (the “Organization”) and **PERSPECTIVES, LTD.** (“Business Associate” or “BA”).

### RECITALS

A. Organization is a “covered entity” within the meaning of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH”), the standards for the Privacy of Individually Identifiable Health Information (“Privacy Rule”), the standards for the Security of Electronic Protected Health Information (the “Security Rule”) and the Breach Notification Rule promulgated by the United States Department of Health and Human Services (“DHHS”) pursuant thereto.

B. BA provides Employee Assistance Program services to Organization, which services necessarily involve the access to, generation of, use of, maintenance of, or disclosure of health information that identifies individual patients (“Protected Health Information” or “PHI”) some of which is in electronic form (“Electronic Protected Health Information” or “EPHI”). Accordingly, BA is a business associate of Organization pursuant to HIPAA, HITECH, the Privacy Rule, the Security Rule and the Breach Notification Rule.

C. Organization is obligated by HIPAA, HITECH, the Privacy Rule and the Security Rule to obtain “satisfactory assurances” from its business associates as a precondition to permitting a business associate to access, generate, use, maintain, or disclose PHI and EPHI on its behalf or in the course of performing services for it.

D. For the foregoing reasons, Organization and BA desire to enter into an agreement that complies with all the requirements of HIPAA, HITECH, the Privacy Rule and Security Rule regarding business associate “satisfactory assurances.”

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained herein, Organization and BA agree as follows:

#### 1) DEFINITION OF TERMS

- a. Any terms used in this BAA that are defined in HIPAA, HITECH, the Privacy Rule, the Security Rule, or the Breach Notification Rule shall have the same meaning when used in this BAA as they have in HIPAA, HITECH, the Privacy Rule, the Security Rule and the Breach Notification Rule.

#### 2) OBLIGATIONS OF BUSINESS ASSOCIATE

- a. BA is authorized to access, generate, maintain, use, disclose or transmit PHI and EPHI only as necessary and appropriate to perform the following services as defined in the Consulting Agreement on behalf of or for Organization, or as described in a services agreement between BA and Organization dated **September 18, 2019**.
- b. Except as otherwise limited in this BAA, BA may also use PHI and EPHI for the proper management and administration of BA or to carry out the legal responsibilities of BA,

and as required by law. BA may also use PHI and EPHI received from or pertaining to Organization to de-identify the PHI or EPHI in any manner permitted by the Privacy Rule and the Office of Civil Rights guidelines regarding de-identification. Once de-identified, BA may use this data for any purpose since it is no longer PHI protected by HIPAA, HITECH, the Privacy Rule, the Security Rule, or the Breach Notification Rule.

- c. BA shall not use or further disclose PHI and EPHI other than as permitted or required by this BAA or as required by law. BA acknowledges that it is obligated to independently comply with the Security Rule, certain provisions of the Privacy Rule as mandated by HITECH and the Privacy Rule, and the Breach Notification Rule, and that it may be directly liable to the government for fines and other sanctions imposed by DHHS, and the State Attorney General for non-compliance.
- d. BA agrees to use appropriate safeguards to prevent use or disclosure of PHI and EPHI other than as provided for by this BAA. BA further agrees to implement the requirements of the Security Rule to protect EPHI in its possession, including implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains, or transmits on behalf of Organization. "Appropriate Safeguards" include, but are not limited to, physical, administrative and technical safeguards such as locking cabinets or rooms where PHI is housed, using computer passwords or other security measures to prevent unauthorized access to PHI in electronic format, providing encryption or comparable protection for EPHI at rest and in motion, implementing policies and procedures describing authorized access and use for BA's work force, and human resources policies and procedures to enforce these rules.
- e. In making a permitted or required use or disclosure of PHI or EPHI, BA shall comply with Organization's minimum necessary requirements stated in Organization's policies and procedures.
- f. BA agrees to perform such activities as are necessary or appropriate to mitigate, to the extent practicable, any harmful effect that is either independently known to BA or brought to BA's attention by Organization, as a result of a wrongful use or disclosure of PHI or EPHI by BA. This obligation is in addition to the obligations stated in paragraph 2.d of this BAA.
- g. BA agrees to report to Organization any use or disclosure of PHI or EPHI in violation of this BAA. BA further agrees to report to Organization any security incident regarding EPHI of which it becomes aware. Without limiting the generality of the foregoing, BA agrees to notify Organization of any Breach (as that term is defined in HITECH and the Breach Notification Rule) of unsecured PHI or EPHI that BA discovers or should have discovered. BA shall provide such notification of a Breach within five (5) business days of the date upon which it discovered the Breach. BA shall provide to Organization the name, address, telephone number, and email address of each individual affected by a Breach, along with a description of the data involved in the Breach, a description of how the Breach occurred, and a description of all internal steps that the BA has taken to prevent a future similar Breach. BA shall cooperate with Organization in the preparation and distribution of notices of the Breach to the affected individuals, and with providing

notice to DHHS and media outlets as required by HITECH and the Breach Notification Rule.

- h. BA agrees to ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI or EPHI received from, or created or received by BA on behalf of Organization, agrees to the same restrictions and conditions that apply through this BAA to BA, including that each such agent or subcontractor agrees to implement reasonable and appropriate safeguards to protect EPHI. BA shall accomplish this by executing a proper Business Associate Agreement with each such subcontractor, as described in the Privacy Rule, that is at least as stringent as this BAA. BA further agrees that no subcontractors from foreign countries will be used, without the prior express written consent of the Organization.
- i. BA agrees to notify Organization within five (5) business days of receipt of a request by an individual for access to the individual's PHI or EPHI. Once Organization has determined that the individual is entitled to access to the requested PHI or EPHI pursuant to the Privacy Rule and so notifies BA (whether the individual's request was first made to BA or directly to Organization), then BA shall provide access to PHI and EPHI in a Designated Record Set to an individual or to an individual's designee with respect to EPHI, in order to meet the inspection and copying requirements of the Privacy Rule. If the Organization determines that the individual is not permitted access to PHI or EPHI pursuant to the Privacy Rule, then BA shall take such action as the Organization requests in order to satisfy the Organization's obligations under the Privacy Rule for denied requests for access.
- j. BA agrees to notify Organization within five (5) business days of receipt of a request by an individual to amend the Individual's PHI or EPHI. When notified by Organization that Organization has agreed to an individual's request for an amendment to the individual's PHI or EPHI, BA shall make the amendment(s), and incorporate such amendments into the PHI and EPHI in its possession. If Organization does not agree to a requested amendment, BA shall take such action as Organization requests in order to satisfy Organization's obligations under the Privacy Rule for denied requests for amendment.
- k. To the extent that BA is required pursuant to this BAA to carry out one or more of Organization's obligations under the Privacy Rule, BA shall comply with the requirements of the Privacy Rule applicable to the Organization's performance of such obligation.
- l. BA agrees to make its internal practices, books, and records relating to its use and disclosure of PHI and EPHI available to Organization or the Secretary of DHHS (or his/her designee), for purposes of the Secretary of DHHS (or his/her designee) determining Organization's and the BA's compliance with HIPAA, HITECH, the Privacy Rule, the Security Rule, and the Breach Notification Rule, or for purposes of private Organization auditing and monitoring of BA's performance.
- m. BA agrees to document all disclosures of PHI and EPHI and information related to such disclosures as would be required for Organization to respond to a request by an individual for an accounting of disclosures of PHI and EPHI in accordance with the Privacy Rule and HITECH. Within five (5) days of Organization's request, BA shall provide

to Organization the information so collected to permit Organization to respond to a request by an individual for an accounting of disclosures of PHI and EPHI. To the extent that BA holds PHI or EPHI from an Electronic Health Record used by Organization, BA further agrees to provide to a requesting individual an accounting of disclosures of EPHI it has made, including an accounting of disclosures for treatment, payment and health care operations during the three years prior to the individual's request. If an individual makes a request for an accounting of PHI or EPHI directly to BA in circumstances in which BA does not hold EPHI from an EHR, then BA shall notify the Organization of the request within five (5) days of receiving the request from the individual and provide the Organization with the information about disclosures that BA has documented, in the same manner as if the individual's request was made directly to the Organization.

- n. BA agrees to honor any restriction on the use or disclosure of PHI or EPHI that Organization agrees to, provided that Organization notifies BA of such restriction.
- o. BA shall establish specific procedures and mechanisms to implement BA's obligations pursuant to HIPAA, HITECH, the Privacy Rule, the Security Rule, the Breach Notification Rule, and this BAA. Such procedures and mechanisms shall be in writing, and shall be available to Organization for review upon request.
- p. BA shall require each member of its work force that has contact with PHI and EPHI in the course of providing services to Organization to sign a statement indicating that the work force member has read this BAA, understands its terms, and agrees to abide by them, including without limitation, the obligation not to use or disclose PHI and EPHI except as necessary and appropriate to carry out the services being performed by BA for or on behalf of Organization. BA will make such signed statements available to Organization upon request.

### 3) OBLIGATIONS OF ORGANIZATION

- a. Organization shall provide BA with the notice of privacy practices and minimum necessary policy that Organization produces in accordance with the Privacy Rule, as well as any changes to such notice or policy.
- b. Organization shall notify BA of any restriction to the use or disclosure of PHI and EPHI that Organization has agreed to in accordance with the Privacy Rule.
- c. Organization shall not request BA to use or disclose PHI or EPHI in any manner that would not be permissible under the Privacy Rule or the Security Rule if done by Organization, except for uses of PHI for the proper administration and management of BA or as required by law.

### 4) TERM AND TERMINATION

- a. The term of this BAA shall commence on the effective date of the Consulting Agreement and shall continue conterminously with the term of all services being performed by BA for or on behalf of Organization that necessarily and routinely involve PHI and EPHI, unless sooner terminated in accordance with paragraph 4.b hereof.

- b. Upon Organization's knowledge of a material breach by BA, or BA's knowledge of a material breach by Organization, Organization or BA (as applicable) shall, at its sole option, do either of the following:
  - i. Provide a fifteen (15) day opportunity for the non-breaching party to cure the breach to the satisfaction of the non-breaching party, or terminate this BAA and the services relationship with BA if the breaching party does not cure the breach to the satisfaction of the non-breaching party, or
  - ii. Immediately terminate this BAA and the services relationship with BA without an opportunity to cure if the non-breaching party determines, in its sole discretion, that cure is not possible.
- c. In addition to the termination for cause provisions stated in paragraph 4.b, this BAA may also be terminated in any of the following circumstances:
  - i. The services relationship between BA and Organization is terminated for any reason;
  - ii. The provisions of HIPAA, HITECH, the Privacy Rule or the Security Rule are amended, modified or changed such that this BAA is no longer mandated;
  - iii. By the mutual agreement of Organization and BA, provided that if the services relationship continues to require BA to access, use, generate, maintain, disclose or transmit PHI or EPHI, a new BAA between Organization and BA must be substituted.
- d. Effect of Termination.
  - i. Upon termination of this BAA for any reason, BA shall return or destroy all PHI and EPHI received from Organization, or created or received by BA on behalf of Organization. This provision shall apply to PHI and EPHI that is in the possession of subcontractors or agents of BA. BA shall retain no copies of PHI or EPHI.
  - ii. In the event that BA believes that returning or destroying PHI or EPHI is infeasible, BA shall provide to Organization an explanation of the conditions that make return or destruction infeasible. Upon Organization's concurrence that return or destruction of PHI or EPHI is infeasible, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI and EPHI to those purposes that make the return or destruction infeasible, for so long as BA maintains such PHI or EPHI.
  - iii. If this BAA is terminated and not immediately replaced with a substitute Business Associate Agreement, and if the Privacy Rule and/or the Security Rule in effect at that time continues to mandate the execution of a Business Associate Agreement between covered entities and their business associates, then the services relationship between BA and Organization shall immediately terminate simultaneously with termination of this BAA, to the extent that BA's services continue to necessarily and routinely involve access, use, generation, maintenance, disclosure or transmission of PHI or EPHI.



construed so as to render it compliant with HIPAA, HITECH, the Privacy Rule, the Security Rule, and the Breach Notification Rule.

- i. If any provision of this BAA is determined by a court of competent jurisdiction to be invalid or unenforceable, this BAA shall be construed as though such invalid or unenforceable provision were omitted, provided that the remainder of this BAA continues to satisfy all of HIPAA, HITECH, the Privacy Rule, and the Security Rule requirements for a business associate agreement. If it does not, then the parties shall immediately renegotiate this BAA so that it does comply with the requirements of HIPAA, HITECH, the Privacy Rule, and the Security Rule or terminate this BAA and the service relationship between the BA and Organization to the extent that BA's services necessarily and routinely involve access, use, generation, maintenance, disclosure or transmission of PHI or EPHI.
- j. This BAA contains the entire agreement between the parties pertaining to this subject matter, and supersedes all prior understandings, whether written or oral, regarding the same subject matter.
- k. The provisions of this BAA dealing with breach notification, the construction of this BAA as a general confidentiality agreement, and BA's obligations to return or destroy PHI and EPHI upon termination shall survive the termination of this BAA for any reason.

In Witness Whereof, the parties have executed this Business Associate Agreement on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Organization Witness

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Business Associate Witness

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_