

AMERIFLEX GENERAL TERMS AND CONDITIONS OF SERVICES

These Ameriflex General Terms and Conditions of Services (“Agreement”) govern the services provided by Interflex Payments, LLC DBA Ameriflex (“Ameriflex”), to you, the Employer and the owner of the Plan (“Client”), and shall be read in conjunction with each statement of work, order form, new client application or renewal application (“Order”), which identifies the selected services applicable to Client (“Services”). Each Order shall be governed solely by the terms of this Agreement and in the event of any conflict between the terms of this Agreement and an Order, this Agreement shall govern unless specifically stated otherwise in the Order.

INTRODUCTION

1. Ameriflex offers a variety of administrative services to Clients, including such services related to:

- a. Group health plan continuation coverage services as governed by the provisions of §4980B of the Internal Revenue Code of 1986, as amended (“Code”) and Part 6, Subtitle B, Title I of ERISA (collectively referred to herein as “COBRA”), or in the case of State Continuation, as governed by such state’s Continuation Coverage laws.
- b. Health flexible spending arrangements (“Health FSAs”) under Code §105 to be offered under a Code §125 cafeteria plan.
- c. Dependent care flexible spending accounts (dependent care assistance programs (“DCFSA”) under Code §129) to be offered under a Code 125 cafeteria plan.
- d. Health reimbursement arrangements (“HRAs”) under Code §105 and Individual Coverage HRAs and Excepted Benefit HRAs under 84 Fed. Reg. 28888.
- e. Health savings account-oriented “plans” (“HSAs”) under Code §223.
- f. Transportation fringe benefit plans (“CRAs”) under Code §132.
- g. Certain billing services related to the collective of insurance premiums and the like, but unrelated to COBRA.
- h. Certain compliance products related to benefits programs.

Any provision of this Agreement which is either specifically applicable, whether by virtue of its placement under certain Article headings or subheadings or for any other contextual reason, to any selected service that is not a Service or could not be otherwise reasonably interpreted as applicable to the Services shall be inoperative. No such inoperative provision shall render the remaining provisions of this Agreement inoperative by themselves or taken together as a whole. Furthermore, any provisions in this Agreement specific to COBRA Services shall be disregarded for purposes of this Agreement unless directly related to the Services.

ARTICLE I: Definitions.

1.1 Definitions.

“Agreement” means this Ameriflex Administrative Services Agreement, including all Appendices, Exhibits and Orders hereto.

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, as well as coverage offered and/or provided to a Qualified Beneficiary.

“Code” means the Internal Revenue Code of 1986, as amended.

“Continuation Coverage” means coverage following a Qualifying Event provided to a Qualifying Beneficiary under COBRA.

“CRA” has the meaning given in the Introduction.

“DCFSA” has the meaning given in the Introduction.

“DOL” means the United States Department of Labor.

“Effective Date” means the date this Agreement is effective which is the first date of the plan year.

“Eligibility Reports” has the meaning given in Section 4.4.

“Client” has the meaning given in the Introduction.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Health FSA” has the meaning given in the Introduction.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended.

“HSA” has the meaning given in the Introduction.

“IRS” means the United States Internal Revenue Service.

“Litigation” means any litigation or other proceeding including but not limited to any judicial or administrative proceeding involving a dispute arising under this Agreement, or an audit or proceeding by the IRS or DOL involving directly or indirectly the duties or responsibilities of Client or Ameriflex.

“Named Fiduciary” means the named fiduciary as defined in ERISA § 402(a)(1). Ameriflex shall not have any discretionary authority or control respecting management of the Plan. The services Ameriflex performs shall be ministerial in nature with respect to the Plan.

“Participant” has the meaning given in Section 2.2.

“PHI” means Protected Health Information.

“Plan Administrator” means the administrator as defined in ERISA § 3(16)(A).

“Plan” or “Plans” means any or all of the employee benefit plans defined in the Introduction, except for COBRA.

“Qualified Beneficiary” or “QB” has the meaning given to such term under COBRA.

“Qualifying Event” or “QE” has the meaning to such term under COBRA.

ARTICLE II: Term and Scope.

2.1 Term.

With regard to the Services, the initial term of this Agreement will be the 36-month period commencing on the Effective Date (the “Initial Term”) as set forth on the applicable Order. The Term and this Agreement will renew automatically for successive periods of twelve (12) months (the “Renewal Term”) unless such Order is terminated in accordance with this Agreement. The Initial Term and Renewal Term shall collectively be referred to as the “Term.”

2.2 Scope of Services.

Client has the final authority to control and manage the operation of the Plans, including any and all discretionary authority over the Plans. Ameriflex is and shall remain an independent contractor with respect to the Services being performed and shall not for any purposes be deemed an employee of Client, nor shall Ameriflex be deemed a partner with Client, engaged in a joint venture with Client or governed by any legal relationship with Client other than that of an independent contractor. Ameriflex does not assume any responsibility for the general policy design of the Plans, the adequacy of their funding, or any act or omission or breach of duty by Client. Ameriflex is not in any way to be deemed an insurer, underwriter or guarantor with respect to any benefits payable under the Plans. Ameriflex generally provides reimbursement services only and does not assume any financial risk or obligation with respect to claims for benefits payable by Client under the Plans. Nothing herein shall be deemed to constitute Ameriflex as a party to the Plans or to confer upon Ameriflex any authority or control respecting management of the Plans, authority or responsibility for the terms or validity of the Plans, or any fiduciary duty or other obligation toward any participants in the Plans other than that which may be imposed by the judicial, administrative or other application of ERISA by a governmental authority. Client shall assume all risk and liability associated with transactions, including any risk of counterfeit, charged-back or fraudulent transactions except to the extent due to Ameriflex’s material breach of the Agreement. Client agrees any information or data regarding Plans or Participants which Client sends to Ameriflex is done so in their Plan Administrator capacity. Nothing in this Agreement shall be deemed to impose upon Ameriflex any obligation to any employee of Client or any person who is participating in the Plans (“Participant” or “Qualified Beneficiary,” as applicable). Ameriflex Services are intended for residents in the United States and are not intended for access or use by persons outside of the United States.

ARTICLE III: Cobra Administration.

3.1 Client Responsibilities; General Duties Owed to Ameriflex.

During the Term, Client shall carry out all necessary duties to Ameriflex and furnish Ameriflex with all information necessary to provide COBRA administrative services, including, but not limited to:

- a. Providing Ameriflex, with all accurate and complete information necessary for Ameriflex to adequately fulfill its obligations under this Agreement in a timely and efficient manner. Ameriflex shall have no affirmative duty to pursue, verify or review this information and shall not be responsible for the consequences of Client’s failure to provide it. Client’s use of a third party to provide such information to Ameriflex does not absolve Client of its obligations under this Agreement;

- b. Upon notification by Ameriflex to Client or the carrier, adding Qualified Beneficiaries who have elected Continuation Coverage under Client's health Plan, including, if necessary, on a retroactive basis. Such notification shall include the provision of and/or access to online enrollment reports reflecting this and other related information;
- c. Making ultimate decision with regard to pursuing Qualified Beneficiaries whose addresses are discovered to be mistaken, outdated or otherwise incorrect;
- d. Ensuring that information provided to Ameriflex, Plan documents and arrangements with carriers are consistent;
- e. Acknowledging that Ameriflex makes no guarantee of sufficient funds on checks or other forms of payment made payable to Ameriflex from Qualified Beneficiaries electing Continuation Coverage. Ameriflex shall not be responsible for any payment deemed insufficient for such reasons;
- f. Acknowledging and understanding that any applicable laws, rules and regulations are subject to modification and amendment, which may require Ameriflex to adjust certain policies and procedures in order to discharge its duties;
- g. Maintaining its status as Plan Administrator for purposes of ERISA of any and all Plans for which Ameriflex is acting as third-party administrator for purposes of COBRA compliance;
- h. Notifying Ameriflex, in writing, of all entity changes, reorganizations, bankruptcies and any other transitions and their effect on benefit plans. Ameriflex shall take written direction from Client regarding entity changes and shall have no duty to pursue such information; and
- i. Examining all results, status reports, premium calculations, remittance reports and letters, and notifying Ameriflex of any discrepancies as soon as reasonably possible.

Client shall be responsible for all damages and/or overpayments that result or could have been avoided had Client timely reviewed its reports or data available to the Client and notified the appropriate parties of the discrepancies. All information required under this Section will be provided in such format and at such intervals as is reasonably required by, and acceptable to, Client and Ameriflex.

3.2 Premiums.

Client will determine the cost to the Plan for Continuation Coverage and establish the premium to be charged to Qualified Beneficiaries. Notwithstanding the foregoing, Ameriflex shall, at Client's request, provide guidance with regard to the premium to be charged for any health FSA or HRA it administers for Client, although the final determination of such premium shall remain the responsibility of Client.

3.3 Authority to Act.

Client will provide Ameriflex with the names of individuals authorized to act for Client in connection with this Agreement. In the case of a broker, agent or other third party who is not an owner or employee of Client, Ameriflex may first require the execution of a Designation of Outside Plan Representative form granting the authority to act for Client in connection with this Agreement

3.4 Settlement With Insurers.

Client shall be responsible for the settlement of billing and invoicing issues with insurance carriers arising from COBRA's time allowance for Qualified Beneficiaries to remit premium payments, including but not limited to, issues arising from the provision of Continuation Coverage to Qualified Beneficiaries who fail to remit premiums for such Continuation Coverage in a timely manner. Any efforts to settle such issues via the collection of payments from Qualified Beneficiaries, if any such efforts are necessary for same, will be the sole responsibility of Client. Client shall be fully responsible for the settlement of billing and invoicing issues with insurance carriers arising from Client's failure to reconcile the notification provided pursuant to this Section with insurer's bills and/or invoices in a timely fashion.

3.5 Ameriflex COBRA Responsibilities.

During the Term, the obligations of Ameriflex to provide COBRA administrative Services shall include the following:

- a. Providing COBRA General Rights letters for all new hires enrolled in the Plan with proof of confirmation of mailing within ten (10) business days of receiving complete and appropriate data from Client;
- b. Providing COBRA Specific Rights/Qualifying Events letter, and enrollment forms for all Qualifying Events, to all Qualified Beneficiaries with proof or confirmation of mailing within ten (10) business days of receiving complete and appropriate data from Client;
- c. Providing notices of expiration or termination of Continuation Coverage and notices of conversion rights, if applicable, within ten (10) business days of learning of an applicable terminating event;
- d. Receiving and processing duly executed election responses;
- e. Tracking, monitoring and recording initial election periods for Qualified Beneficiaries;
- f. Notifying Client or the Client designated enrollment contact, when a Qualified Beneficiary elects Continuation Coverage upon receipt of completed enrollment form and first complete premium payment. Such notification can include the provision of and/or access to online reporting to Client;
- g. When requested by Client, preparing coupon booklets for Qualified Beneficiaries who elect Continuation Coverage;
- h. Tracking and monitoring the 45-day retroactive payment period for Qualified Beneficiaries in their election period;
- i. Tracking and monitoring monthly premium payments and 30-day grace periods for Qualified Beneficiaries;
- j. Collecting monthly premiums and remitting same to Client on a monthly basis;
- k. Determining the duration of Continuation Coverage;
- l. Notifying the Client-designated enrollment contacts promptly of any coverage termination of a Qualified Beneficiary who has previously elected Continuation Coverage. Such notification can include the provision of and/or access to online reporting to the Client-designated contact;

m. Providing reporting functionality to Client regarding Qualified Beneficiary status levels, payments and remittances; and

o. Upon timely request by Client and subject to the pricing terms in an applicable Order, sending open enrollment information to COBRA participants and processing same.

3.6 Maintenance of Roster of Qualified Beneficiaries.

Ameriflex will establish, maintain and update a roster containing the names of all Qualified Beneficiaries who elect Continuation Coverage under the Plan and provide such roster to Client on a monthly basis. The Client shall be responsible for examining such rosters and notifying Ameriflex of any discrepancies as soon as reasonably possible.

3.7 Remission of Premium Payment.

Ameriflex will maintain and render accounting of the premiums received from Qualified Beneficiaries for Continuation Coverage and remit the amounts collected, minus the statutory 2% administration fee, to Client at such times and in such manner as may be agreed upon by Ameriflex and Client, but not more frequently than monthly.

ARTICLE IV: Plan Administration. (FSA/DCFSA/HRA/HSA/CRA)

4.1 Client Responsibilities: General Duties Owed to Ameriflex.

During the Term, Client shall carry out all necessary duties to Ameriflex and furnish Ameriflex with all information necessary to provide Plan administrative services, including, but not limited to:

a. Client has the authority and responsibility for the Plans and their operation, including the authority and responsibility for administering, construing and interpreting the provisions of the Plans and making all determinations thereunder. Client gives Ameriflex the authority to act on behalf of Client in connection with the Plans, but only as expressly stated in this Agreement, the Order, or as otherwise mutually agreed in writing by Client and Ameriflex. All final determinations as to a Participant's entitlement to Plan benefits, including access to the use of electronic payment cards for the enjoyment of said benefits, are to be made by Client as well as any determination upon appeal of a denied claim for Plans benefits. Client is considered the Plan Administrator and Named Fiduciary of the Plans benefits for purposes of ERISA. Client is considered the Plan Administrator. As Plan Administrator, only Client has the power to waive, alter, breach or modify the terms and conditions of the Plan and shall exercise all discretion and authority with respect to the disposition of available benefits.

b. Client, as Plan Administrator, shall be responsible for and has the duty to ensure compliance with COBRA (except where Client has otherwise engaged Ameriflex to provide COBRA Services), amend the Plans as may be necessary to ensure ongoing compliance with applicable law, including but not limited to the 2010 Health Care Act as amended by the 2010 Health Care Reconciliation Act, prepare and file any required tax and governmental returns (including Form 5500) relating to the Plans, determine if and when a valid election change has occurred, execute and retain required Plan and claims documentation, and take all other steps necessary to maintain and operate the Plans in compliance with applicable provisions of the Plans, ERISA, HIPAA, the Code and other applicable federal and state laws. It shall be Employer's responsibility to ensure

all participants' e-mail addresses and mailing addresses are accurate and up to date in order for Ameriflex to provide any notices or messaging as required under State and Federal laws.

4.2 Ameriflex Responsibilities.

During the Term, Ameriflex shall carry out those duties as described in this Agreement and in any fully executed Order.

4.3 Services Charges; Funding.

Client shall pay Ameriflex the service charges as set forth in the applicable Order. Client shall ultimately be responsible for the funding of the payment of a Plans benefits as described herein, including the provision of a prefund amount to Ameriflex, which shall be subject to a reasonable transition fee in the event of renewals. Payments pursuant to this Agreement shall be made via ACH as described in this Agreement. Client shall execute the ACH authorization form provided. Ameriflex reserves the right to assess and collect a processing fee in connection with settlement and other fees relating to the servicing of the Plan. Any fee assessed will be provided to you on an invoice. Client must choose a settlement option as provided on the funding form, new client application, renewal application or Order.

4.4 Information to Ameriflex.

a. Client shall furnish the information requested by Ameriflex as determined necessary to perform Ameriflex's functions hereunder, including information concerning the Plans and the eligibility of individuals to participate in and receive benefits from the Plans. Such information shall be provided to Ameriflex in the time and in the manner agreed to by Client and Ameriflex. Ameriflex shall have no responsibility with regard to benefits paid in error due to Client's failure to timely update such information. From time to time thereafter, Ameriflex shall provide Client with updated reports summarizing the eligibility data provided by Client ("Eligibility Reports") by electronic medium unless otherwise agreed to in writing by the parties. Client's use of a third party to provide such information to Ameriflex does not absolve Client of its obligations under this section. Client shall be exclusively responsible for the accuracy, completeness and timeliness of the information requested and provided to Ameriflex. Client understands and agrees that Ameriflex has no duty or responsibility to review, audit, verify or otherwise inquire into any data or information provided by Client to Ameriflex. Client is solely responsible to correct all errors in any data, files or other information provided by Ameriflex to Client created from the data and information originally provided to Ameriflex.

b. The Eligibility Reports shall specify the effective date for each Participant who is added to or terminated from participation in the Plans. Client shall be responsible for ensuring the accuracy of its Eligibility Reports, and bears the burden of proof in any dispute with Ameriflex relating to the accuracy of any Eligibility Report. Ameriflex shall have no liability to Client or any Participant as a consequence of an inaccurate Eligibility Report, and Ameriflex shall not have any obligation to credit Client for any claims expenses or administrative fees incurred or paid to Ameriflex as a consequence of Client failing to review Eligibility Reports for accuracy. Ameriflex shall assume that all such information is complete and accurate and is under no duty to question the completeness or accuracy of same.

c. Client shall cooperate with Ameriflex with regard to the collection and reporting of any information regarding a Plan or Plans or any Participant or Participants which is deemed necessary as part of the fulfillment of any reporting obligation imposed upon Ameriflex by any governmental agency. If Client fails to cooperate as aforementioned, Ameriflex reserves the right to report such failure to the governmental agency requesting the information. Furthermore, in addition to the indemnification obligations imposed elsewhere in this Agreement, Client shall indemnify Ameriflex for any penalties or

other negative actions undertaken by any such agency due to such failure by Client to cooperate with such collection and reporting efforts by Ameriflex.

d. The parties agree that Client is fully responsible for the accuracy and completeness of its electronic data submissions to Ameriflex and that the consequences of any error or errors in electronic data transmission made by Client or its agent shall not be the responsibility of Ameriflex but rather that of Client.

e. The parties agree that any such errors or errors requiring manual correction by Ameriflex shall result in the imposition of a Data Correction Fee to be paid by Client determined by the amount of time undertaken by Ameriflex to correct the error or errors, to wit: \$150.00 for the first hour (not pro-rated) and \$30.00 for every quarter-hour thereafter (not pro-rated) ("Data Correction Fee"). The parties further agree that any such manual correction shall not be undertaken until notice has been given to Client that such correction is necessary and Client has authorized same. This Data Correction Fee shall be assessed on a transmission-by-transmission basis. That is, errors that occur in subsequent transmissions shall be considered new errors even if they are the same or similar to errors in previous transmissions. Any such manual correction by Ameriflex shall not absolve Client of responsibility for any consequences resulting from the error or errors existing prior to the manual correction. Furthermore, the refusal of Client to authorize such manual correction shall not absolve Client of any such responsibility.

4.5 Plan Documents and Plan Design.

Ameriflex shall provide a single Plan document and a single summary Plan description to Client for each Plan. Such documents shall be the sole property of Client. It is Client's responsibility to ensure that the information contained in these documents reflects the desires of the Client. If the Plan sponsor finds any errors with regard to intended Plan design in these documents, Ameriflex will make necessary corrections as warranted provided timely notice of such errors is given to Ameriflex. Ameriflex, however, reserves the right to decline to make modifications to these documents bearing no direct relation to Plan design (e.g., formatting, grammar, stylistic concerns, and the like). It is the sole responsibility of Client to ensure that the Plan document is properly executed by a representative of the Plan sponsor and that the summary Plan description is distributed to Participants in accordance with applicable law. Client will notify Ameriflex of any changes to its Plans at least thirty (30) days before the effective date of such change. If such change requires an amendment to the Plan document and is to be made effective before the first day of the subsequent Plan year, Ameriflex shall levy a fee of \$150.00 to amend the Plan document for Client. Client may, in its discretion, amend its Plan documents on its own; however, Ameriflex is not responsible for compliance with any Plan document changes of which it is not made aware.

4.6 Liability for Claims.

Client is ultimately responsible for payment of claims made pursuant to, and the benefits to be provided by, the Plans. Ameriflex does not insure or underwrite the liability of Client under the Plans. Except for expenses specifically assumed by Ameriflex in this Agreement, Client is responsible for all expenses incident to the Plans.

4.7 Service Delivery.

Ameriflex shall provide customer service personnel by telephone during normal business hours as determined by Ameriflex, and shall provide electronic administrative services. Ameriflex shall not be deemed in default of this Agreement, nor held responsible for, any cessation, interruption or delay in the performance of its obligations hereunder due to causes beyond its reasonable control, including, but not limited to, natural disaster, act of God, labor controversy, civil disturbance, disruption of the public

markets, act of terrorism, war or armed conflict, or the inability to obtain sufficient materials or services required in the conduct of its business, including Internet access, or any change in or the adoption of any law, judgment or decree.

4.8 Benefits Payments.

a. Ameriflex shall, on behalf of Client, operate under the express terms of this Agreement and the Plans. Ameriflex shall initially determine if persons covered by the Plans (as described in the Eligibility Reports) are entitled to benefits under the Plans and shall pay benefits from the Plans in its usual and customary manner to Participants. Ameriflex shall have no duty or obligation with respect to claims incurred prior to the Effective Date ("Prior Reimbursement Requests"), if any, and/or administration of the Plans or other services arising prior to the Effective Date ("Prior Administration"), if any, regardless of whether such services were/are to be performed prior to or after the Effective Date.

b. Client agrees that:

- (1) Ameriflex has no responsibility or obligation with respect to Prior Reimbursement Requests and/or Prior Administration;
- (2) Client will be responsible for processing Prior Reimbursement Requests (including any run-out claims submitted after the Effective Date) and maintaining legally required records of all Prior Reimbursement Requests and Prior Administration sufficient to comply with applicable legal requirements; and
- (3) Client shall indemnify and hold Ameriflex harmless for any liability relating to Prior Reimbursement Requests and/or Prior Administration.

ARTICLE V: Indemnification

5.1 Indemnification by Client.

Client agrees to indemnify and hold harmless Ameriflex from and against any and all claims, suits, causes of action, liabilities, losses, damages, costs, charges, expenses (including but not limited to, reasonable attorneys' fees), judgments, and settlements that Ameriflex sustains as a result of any act or omission of Client in connection with this Agreement. Client will not be obligated to indemnify Ameriflex if it is determined that a judgment, determination, or settlement in litigation was entered into as a result of an act or omission by Ameriflex that was:

- (a) Criminal or fraudulent; or
- (b) A negligent, reckless or intentional disregard of Ameriflex's obligations under this Agreement.

Notwithstanding the foregoing, Client will indemnify and hold Ameriflex harmless to the extent Client concurred in, instructed, directed, or caused such acts or omissions by Ameriflex whether by its own acts, its own omissions, or both.

5.2 Indemnification by Ameriflex/Limitation of Liability.

Ameriflex agrees to indemnify and hold harmless Client from and against any and all claims, suits, causes of action, liabilities, losses, damages, costs, charges, expenses, judgments, and settlements that Client sustains as a result of any act or omission of Ameriflex in connection with the performance of services under this Agreement, provided that such acts or omissions do not arise out of or relate to verbal or written instructions or procedures supplied by Client.

Ameriflex will not be obligated to indemnify Client if it is determined that a judgment, determination, or settlement in litigation was entered into as a result of an act or omission by Client which was:

- (a) Criminal or fraudulent;
- (b) A negligent, reckless or intentional disregard of Client's obligations under this Agreement; or
- (c) A decision to proceed against any recommendation, advice or guidance of Ameriflex.

Notwithstanding the foregoing, Ameriflex will indemnify and hold Client harmless to the extent Ameriflex concurred in, instructed, directed, or caused such acts or omissions by Client whether by its own acts, its own omissions, or both.

IN NO EVENT SHALL AMERIFLEX BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOST BUSINESS, LOSS OF DATA OR COST OF SUBSTITUTE SERVICES) ARISING OUT OF OR IN CONNECTION WITH ANY AGREEMENT BETWEEN THE PARTIES, AMERIFLEX SYSTEMS OR THE SERVICES PERFORMED THEREUNDER UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE). AMERIFLEX'S LIABILITY TO CLIENT (INCLUDING ITS AGENTS AND BROKERS OF RECORD), IN ANY CASE OR ADMINISTRATIVE ACTION, SHALL BE LIMITED TO ANY DIRECT DAMAGES IN AN AMOUNT EQUAL TO ACTUAL DAMAGES OR THE TOTAL AMOUNT OF FEES PAID BY CLIENT DURING THE TWENTY-FOUR (24) MONTHS PRECEDING THE EVENT, WHICHEVER IS LESS, WITH THE EXCEPTION OF ANY FEES, FINES OR PENALTIES OF ANY NATURE IMPOSED BY ANY FEDERAL GOVERNMENTAL AUTHORITY (INCLUDING BUT NOT LIMITED TO THE DOL AND THE IRS).

5.3 Survival of Provision.

The provisions of this Article will survive the termination of this Agreement.

ARTICLE VI: Business Loss Coverage

6.1 Business Loss.

Subject to the terms of this section, Ameriflex shall reimburse Client in the amount of any aggregate loss ("Business Loss") resulting from Client's offering a health FSA pursuant to this Agreement, such loss to be defined as the amount by which the total claims made against the Client's health FSA over the course of the Plan year surpass the "Employee Contributions," (defined as the total salary reductions (plus any COBRA-related health FSA premiums) contributed by health FSA participants) plus the payroll tax (FICA) savings enjoyed by Client by virtue of such salary reductions. The requirements to be reimbursed are:

- a. Client must be in compliance with all terms of this Agreement throughout the entire Plan year. Furthermore, Client must participate in the automatic settlement program for purposes of the Health FSA throughout the Plan year. Notwithstanding the foregoing, for public sector clients opting for a three-year Term only, such participation in the automatic settlement program is not required.
- b. Client must inform Ameriflex of its intent to claim a Business Loss within thirty (30) days of

the end of the health FSA Plan year, or in the case of a health FSA with a grace period, within thirty (30) days of the expiration of such grace period, using a form provided by Ameriflex for that purpose. Client must be an active health FSA client of Ameriflex on the date the claim is made.

c. Amounts that are carried over to a subsequent Plan year shall not count as claims made against Client's health FSA for the previous Plan year for purposes of determining a Business Loss, nor shall amounts carried over to a subsequent Plan year count as an Employee Contribution for such purposes.

d. This Business Loss coverage is only available for health FSAs offered over the course of a 12-month Plan year. No such coverage is available for health FSAs offered over the course of a "short Plan year."

e. No Business Loss Coverage shall be made available if any of the Business Loss is attributable to employee termination, reductions of hours or other actions undertaken by Client for the primary purpose of experiencing and/or enhancing such Business Loss.

f. In the event that a Business Loss claim is made and Ameriflex approves such claim, Client shall have the option of receiving a lump sum payment or having such amount credited against administrative fees charged by Ameriflex to Client for health FSA administration in the subsequent Plan year.

ARTICLE VII: Service Fees.

7.1 Initial Case Setup Fee.

An initial case setup fee specified in an Exhibit or Order, made a part hereof, will become payable to Ameriflex at the time this Agreement is executed.

7.2 Service Fee and Charges.

A service fee and/or charges specified in an Exhibit or Order, made a part hereof, will be paid by Client to Ameriflex. For Renewal Terms, Ameriflex reserves the right to increase or modify the service fee at any time upon thirty (30) days' notice to Client, but no more than once every twelve (12) months. The service fee will be paid regardless of whether a Qualified Beneficiary electing Continuation Coverage pays the premiums for such Continuation Coverage for the period billed or the month enrolled in such Continuation Coverage. Ameriflex shall have the right to increase service fees and/or charges, including monthly charges, after the first year of providing the services, on an annual basis up to three percent (3%). Notwithstanding the foregoing, Ameriflex may also change the monthly service charges as of the date any change is made in the Plans by the Client.

7.3 Additional Fees.

Charges for additional services requested by Client not included in this Agreement will be agreed upon prior to the performance of such services by Ameriflex.

7.4 Payment Terms.

Client shall provide bank instructions for the use of Automated Clearing House ("ACH") for the automated collection of the fees described in this Article. Ameriflex will transmit an invoice to Client for

service fees and/or charges on a monthly or periodic basis as agreed upon and will transmit invoices to Client for additional services immediately following the performance of such services, for the amount to be debited. If Client does not provide bank instructions for the use of ACH, Ameriflex will submit an invoice to Client and payment of each invoice is due upon receipt. Ameriflex reserves the right to charge a reasonable late fee and/or interest on the outstanding balance of all fees thirty (30) days past the due date and Client will be liable for all reasonable collection and attorneys' fees arising out of Client's failure to remit full payment.

All services charges of Ameriflex shall be billed separately from statements for payment of claims so that proper accounting can be made by Client of the respective amounts paid for claims and for administrative expenses.

7.5 COBRA Administration Fee.

Ameriflex will retain the two percent (2%) COBRA Administration fee paid by the Qualified Beneficiary. Ameriflex will also retain the two percent (2%) COBRA Administration fee for individuals on a COBRA disability extension. Ameriflex will remit to Client the additional allowable forty-eight percent (48%) after the initial eighteen (18) month continuation period has expired, payable during a period of disability extension.

ARTICLE VIII. Plan Administration Funding. (FSA/DCFSA/HRA/HSA/CRA)

8.1 Payment of Benefits.

The Client's health FSA and/or its HRA shall be considered unfunded Plans. Each week or at such other intervals as mutually agreed upon, Ameriflex will notify Client of the amount needed to pay approved benefit claims and Client shall pay or transfer into the bank account the amount needed for the payment of Plans benefits. Client shall enter into such agreements and provide instructions to its bank as necessary to implement this Article. Ameriflex shall have the authority to provide whatever notifications, instructions or directions as may be necessary to accomplish the disbursement of such Plans funds to or on behalf of Participants in payment of approved claims.

8.2 Funding of Benefits.

Funding for any payment on behalf of the Participants under the Plans, including but not limited to, all benefits to Participants in accordance with the Plans, is the sole responsibility of Client, and Client agrees to accept liability for, and provide sufficient funds to satisfy, all payments to Participants under the Plans, including claims for reimbursement for covered expenses, if such expenses are incurred and the claim is presented for payment during the terms of this Agreement. Client shall provide to Ameriflex all benefit claims funding amounts as chosen during implementation or as agreed to on a funding form, an order form or other similar form. Client agrees that any funding submitted to Ameriflex shall be comprised of general assets, does not consist of Plan assets or participant/employee contributions within the meaning of ERISA and shall not be segregated by Ameriflex. Client must choose a settlement option provided on the funding form or New Client Application or Order.

ARTICLE IX. General Provisions.

9.1 Notices.

All notices, certificates or other communications hereunder, which do not relate to any of the “service” terms, will be sufficiently given and will be deemed given when mailed by certified or registered mail, postage prepaid with proper address, at such addresses as either party may designate in writing to the other from time to time for such purposes. Ameriflex and Client may, by written notice given by each to the other, designate any address or addresses to which notices or other communications to them will be sent when required as contemplated by this Agreement.

Client agrees that Ameriflex may communicate confidential, protected, privileged or otherwise sensitive information to Client and specifically agrees to indemnify Ameriflex and hold it harmless: (1) for any such communications directed to Client through a named contact attempted via telefax, mail, telephone, e-mail or any other media, acknowledging the possibility that such communications may be inadvertently misrouted or intercepted; and (2) from any claim for the improper use or disclosure of any PHI by Ameriflex, if such PHI is used or disclosed in a manner consistent with its duties and responsibilities hereunder.

Unless otherwise agreed to in writing, Client agrees that Ameriflex may deliver or furnish information to Participants by print or electronic media, including but not limited to, electronic message, intranet or internet websites. Upon the request of Client, Ameriflex shall provide to Client all notices, including any required opt-out notices, reflecting its privacy policies and practices.

9.2 Reporting.

Ameriflex shall, on a regular basis as agreed to between the parties in an Order, make available to Client via electronic medium a master report showing the payment history and status of Participant claims and the amounts and transactions of Participant accounts. Ameriflex shall also make available to Participants electronic access to reports showing their individual payment history and the amounts and transactions in their individual accounts.

9.3 Recordkeeping.

Ameriflex shall maintain, for the duration of this Agreement, the usual and customary books, records and documents, including electronic records, that relate to the Plans and its Participants that Ameriflex has prepared or that have otherwise come within its possession. These books, records, and documents, including electronic records, are the property of Client, and Client has the right of continuing access to them during normal business hours at Ameriflex’s offices with reasonable prior notice. If this Agreement terminates, Ameriflex may deliver, or at Client’s request, will deliver all such books, records, and documents to Client, subject to Ameriflex’s right to retain copies of any records it deems appropriate. Client shall be required to pay Ameriflex reasonable charges for transportation or duplication of such records. Provided, however, that upon termination of this Agreement, Ameriflex must destroy or return to Client all PHI, including PHI that is in the possession of subcontractors or agents of Ameriflex. If it is infeasible to return or destroy PHI, Ameriflex shall provide to Client notification of the conditions that make return or destruction infeasible. Upon Client’s agreement that return or destruction of PHI is infeasible, Ameriflex shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or

destruction infeasible, for so long as Ameriflex retains such PHI. Ameriflex shall pay all storage charges for any such PHI for so long as Ameriflex retains such PHI.

9.4 Standard of Care.

Ameriflex shall use reasonable care and due diligence in the exercise of its powers and the performance of its duties under this Agreement. If Ameriflex makes any payment under this Agreement to an ineligible person, or if more than the correct amount is paid, Ameriflex shall make a diligent effort to recover any payment made to or on behalf of an ineligible person or any overpayment. However, Ameriflex will not be liable for such payment, unless Ameriflex would otherwise be liable under another provision of this Agreement.

9.5 Non-Discretionary Duties; Compliance Obligations.

Ameriflex and Client agree that the duties to be performed hereunder by Ameriflex are non-discretionary duties. Ameriflex is merely a claims-paying agent of Client. It is expressly understood that Ameriflex is not the fiduciary or Plan Administrator as defined by ERISA and the regulations under ERISA. Employer, Client and/or Plan Sponsor shall have complete discretionary, binding and final authority to interpret benefits, eligibility provisions, or ambiguous plan language, and shall make the final determination regarding the payment of claims or provisions of benefits. While Ameriflex may provide information to Client from time to time, such information shall not be construed as legal, accounting or other professional advice. Any and all compliance obligations with regard to the Plans are the ultimate responsibility of Client and Client is obligated to consult with its own professional advisors as to what those obligations might be and how they should be met. Ameriflex and Client may agree to additional duties in writing as may be specified in writing or in an Order from time to time.

9.6 Severability.

The invalidity or unenforceability of any provision of this Agreement will not affect the other provisions of this Agreement, and this Agreement will be construed in all respects as if such invalid or unenforceable provision were omitted.

9.7 Survival of Obligations.

The parties' obligations under this Agreement, which by their nature are intended to continue beyond the termination or expiration of this Agreement, will survive the termination or expiration of this Agreement.

9.8 Termination of Agreement.

a. This Agreement with respect to COBRA Administration will terminate upon the first to occur of the following:

1. The expiration of thirty (30) days after written notice has been given by Client or Ameriflex to the other party that Client or Ameriflex has breached any material

obligations under this Agreement, and such breach has not been cured after such notice has been given;

2. The date specified in a written notice given by Ameriflex to Client of Ameriflex's termination of this Agreement due to Client's failure to remit to Ameriflex charges or fees for the service; or

3. The end of the Term referenced in an applicable Order if Client or Ameriflex has given the other party at least sixty (60) days written notice of its intent to terminate the Agreement at the end of such Term.

b. In the event of termination of this Agreement, Ameriflex will, unless Client and Ameriflex otherwise agree:

1. Complete the processing of all amounts received by Ameriflex as premiums payable by those who had elected Continuation Coverage prior to the termination, except that Ameriflex shall not be responsible for the termination of Qualified Beneficiaries from Continuation Coverage beyond the date of the termination of this Agreement;

2. Release to Client in any reasonably usable format agreed to by the parties, all necessary records and files relating to billings and in-force records that have been developed and maintained by Ameriflex pursuant to this Agreement;

3. Deliver to Client all unused materials, equipment and specifications that were furnished by Client. Client will fulfill all lawful obligations with respect to policies affected by this Agreement, regardless of any dispute between Client and Ameriflex; and

4. Ameriflex and Client agree that Ameriflex shall not be in any way responsible for the termination of Qualified Beneficiaries from Continuation Coverage beyond the date of the termination of this Agreement.

c. If Ameriflex performs any services pursuant to this Agreement following its termination, including but not limited to services described in this Agreement or an applicable Order, Ameriflex will be entitled to its fees or other charges on the same basis as if this Agreement has continued in effect for the period during which such services were performed. Ameriflex will transmit an invoice to Client for services rendered following termination of this Agreement, and this invoice will be payable upon receipt.

d. This Agreement, with respect to FSA/DCFSA/HRA/HSA/CRA Administration will terminate upon the first to occur of the following:

1. The expiration of thirty (30) days after written notice has been given to Client or Ameriflex to the other that Client or Ameriflex has breached a material obligation under this Agreement, and such breach has not been cured after such notice has been given;

2. The date specified in a written notice given by Ameriflex to Client of Ameriflex's termination of this Agreement due to Client's failure to remit to Ameriflex charges for services; or

3. The end of the Term referenced in an applicable Order if Client or Ameriflex has given the other party at least sixty (60) days written notice of its intent to terminate this Agreement at the end of such Term.

e. If any or all of the FSA/DCFSA/HRA/HSA/CRA Plans are terminated, Client and Ameriflex may mutually agree in writing that this Agreement shall continue for the purpose of payment of any Plans benefit, expense or claims incurred prior to the date of Plans termination. In addition, Client and Ameriflex may mutually agree in writing that this Agreement shall continue for the purpose of payments of any claims for which requests for reimbursements have been received by Ameriflex before the date of such termination. If this Agreement is continued, Client shall pay the monthly services charges incurred during the period that this Agreement is so continued. This Agreement shall continue as provided by and subject to an applicable Order and this Agreement.

f. Nothing in this Article shall be construed to prevent Ameriflex from correcting any errors in administration, material or otherwise, within a reasonable period of time not to exceed thirty (30) days from notice of the error.

g. Nothing in this Article shall be construed to prevent Ameriflex from cancelling or terminating this Agreement prior to implementation, if implementation of the Services and/or Plans is not feasible to administer as Client requests.

h. Termination of this Agreement shall result in the return to Client of any Client provided funds to the extent that such funds exceed the obligations of Ameriflex under this Agreement, a reasonable transition fee for the purpose of undertaking the transfer and/or closing-out of the Plan(s) on Client's behalf. Such return of funds shall be effectuated upon the receipt by Ameriflex of a letter from an authorized representative of Client on Client's letterhead requesting the same upon or after the conclusion of any applicable run-out period.

i. When a group terminates with Ameriflex they must send a letter, on their letterhead, to Ameriflex requesting the release of any prefund dollars. This letter must be sent after the run-out period for the terminated group.

j. Nothing in this Article shall prevent Client from exercising its rights to terminate this Agreement without penalty under the terms of this Agreement.

k. Client agrees that any early termination of an Order or this Agreement, for reasons other than those described herein, shall cause Ameriflex to collect the remaining balance which would be due under such Order, had the Order or this Agreement not been terminated early.

9.9 No Waiver.

The failure of either party to demand strict performance by the other party of any of the terms or conditions set forth herein shall not be construed as a waiver or relinquishment of that party's right to demand strict and complete performance by the other party of said terms and conditions.

9.10 Counterparts.

The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or other electronic means is as effective as executing and delivering this Agreement in the presence of the other party to this Agreement. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.

9.11 Governing Law.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES. IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, VENUE AND JURISDICTION SHALL BE IN THE STATE OR FEDERAL COURTS LOCATED IN COLLIN COUNTY, TEXAS, AND BOTH PARTIES HEREBY CONSENT TO SUCH JURISDICTION AND VENUE.

9.12 Arbitration and Limitations on Actions.

Any controversy or claim arising out of or relating to this Agreement between Client and Ameriflex, or the breach thereof, shall be subject to non-binding arbitration prior to the filing of a complaint in a court of law; provided, however, that such arbitration shall be final and binding and may be enforced in any court with the requisite jurisdiction if the parties agree in advance, in writing, that such arbitration shall have final, binding effect. All arbitration, whether binding or non-binding, shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall take place in a location within a fifty (50) mile radius of Dallas, Texas. Neither party to this Agreement may file such an arbitration request against the other party more than three (3) years after the act or omission giving rise to the action, nor may either party file a claim against the other party more than three (3) years after the act or omission giving rise to the action.

9.13 Audits.

Each party shall be authorized to perform audits of the records of payment to all Participants and other data specifically related to performance of the parties under this Agreement upon thirty (30) days prior written notice to the other. Audits shall be performed during normal working hours. Audits may be performed by an agent of either party provided such agent signs an acceptable confidentiality agreement. Each party agrees to provide reasonable assistance and information to the auditors. Client acknowledges and agrees that if it requests an audit, it shall reimburse Ameriflex for Ameriflex's reasonable expenses, including copying and labor costs, in assisting Client to perform the audit. Each party also agrees to provide such additional information and reports as the other party shall reasonably request. In no event, however, shall Client have access to Ameriflex's individual payroll and personnel files, any information relating to Ameriflex's other clients, or any of Ameriflex's overhead costs or related information.

9.14 Non-Disclosure of Proprietary/Confidential Information.

a. Client and Ameriflex each acknowledge that in contemplation of entering into this Agreement (and as a result of the contractual relationship created hereby), each party has revealed and disclosed, and shall continue to reveal and disclose to the other, information which is proprietary and/or confidential information of such party. Client and Ameriflex agree that each party shall: (1) keep such proprietary and/or confidential information of the other party in strict confidence; (2) not disclose confidential information of the other party to any third parties or to any of its employees not having a legitimate need to know such information; and (3) not use confidential information of the other party for any purpose not directly related to and necessary for the performance of its obligations under this Agreement (unless required to do so by a court of competent jurisdiction or a regulatory body having authority to require such disclosure).

b. Information revealed or disclosed by a party for any purpose not directly related to and necessary for the performance of such party's obligations under this Agreement shall not be considered confidential information of such party for purposes hereof: (1) if, when, and to the extent such information is or becomes generally available to the public without the fault or negligence of the party receiving or disclosing the information; or (2) if the unrestricted use of such information by the party receiving or disclosing the information has been expressly authorized in writing and in advance by an authorized representative of the other party. For purposes of this Section 9.10, confidential information is any information in written, human-readable, machine-readable, or electronically recorded form (and marked as confidential and/or proprietary or words of similar import) and information disclosed verbally in connection with this Agreement and identified as confidential and/or proprietary (or words of similar import); and programs, policies, practices, procedures, files, records, and correspondence concerning the parties' respective businesses or finances. The terms and conditions of this Section 10.10 shall survive the termination of this Agreement.

9.15 Designation of Outside Plan Representative Form.

For purposes of the execution of this Agreement, Ameriflex will only accept the signature of a broker or other designated agent if a duly authorized representative of Client executes the Designation of OPR Form. In accordance with the terms of this form, such designation shall also operate as a designation of an agent for purposes of Plan administration, meaning that Client executing such form authorizes the agent to act on behalf of the Plan Administrator for Client's Plans.

9.16 Business Associate Agreement.

A Business Associate Agreement is included in this Agreement as Exhibit A. The execution of this Agreement shall also operate as an execution of said Business Associate Agreement.

9.17 Escheatment.

Client is responsible for compliance with all escheatment obligations.

9.18 Plan Start Date.

If Client selects a Plan start date which has already passed and/or is in the past, Client understands, acknowledges and agrees that it will not hold Ameriflex liable or responsible, and will hold Ameriflex harmless, for any effects or consequences, whether monetary or otherwise, which may arise out of the Client's decision to establish a Plan with a start date which has already passed.

9.19 Changes to Agreement.

In the event of changes to federal or state laws or regulations affecting any, some or all of the Services, Ameriflex may make changes to this Agreement with thirty (30) days' notice to Client. If within thirty (30) days of the notification of the change or changes, Client elects to terminate this Agreement, Client may do so within thirty (30) days of such notification without penalty.

9.20 Independent Contractor.

It is understood between the parties hereto that the relationship of the parties under this Agreement shall be that of independent contractors, and shall not be construed to constitute an agency, partnership, joint venture, or a Client/employee relationship.

9.21 Entire Agreement/Assignment.

This Agreement, along with any applicable Exhibits, Orders and/or funding forms, constitutes the entire agreement between the parties and supersedes any prior agreements or understandings, written or verbal, including any marketing or advertising materials, or other media, concerning the subject matter hereof. No modification of nor addition to this Agreement will be effective unless evidenced by a writing signed by the parties hereto. Client may not assign this Agreement, nor any part hereof, to any unaffiliated third party without prior, written consent of Ameriflex.

EXHIBIT A

HIPAA Business Associate Agreement

This HIPAA Business Associate Agreement (the "BA Agreement") is entered into by and between Ameriflex and Client (each a "Party" and collectively the "Parties"). This BA Agreement is incorporated by reference into the Ameriflex General Terms and Conditions (the "Agreement").

WHEREAS, Client, as a plan sponsor of health benefit plans, is required to enter into this BA Agreement to obtain satisfactory assurances that Ameriflex, a Business Associate under the Health Insurance Portability and Accountability Act ("HIPAA"), will appropriately safeguard all Protected Health Information ("PHI") disclosed, created or received by Ameriflex on behalf of Client; and

WHEREAS, Client desires to engage Ameriflex to perform certain functions described in the Agreement, for, or on behalf of Client involving the disclosure of PHI by Client to Ameriflex, or the creation or use of PHI by Ameriflex, and Ameriflex desires to perform such functions; and

WHEREAS, Ameriflex may be considered an organization that provides data transmission of PHI to Client and requires access on a routine basis to PHI. As required under the Omnibus HITECH Act Final Regulations as of January 25, 2013, Ameriflex will be treated as a Business Associate of the Client.

I. Definitions.

Unless otherwise defined, terms used in this BA Agreement have the same meaning as those terms in the Standards for Privacy of Individually Identifiable Health Information or the HIPAA Security Standards (“HIPAA Privacy and Security Rules”).

- a. “Breach” shall have the same meaning as the term “breach” in 45 CFR § 164.402.
- b. “Breach Notification Rule” shall mean the Standards and Implementation Specifications for Notification of Breaches of Unsecured Protected Health Information under 45 CFR Parts 160 and 164, subparts A and D.
- c. “Business Associate” shall mean Ameriflex.
- d. “Covered Entity” shall mean Client.
- e. “Electronic Protected Health Information” shall have the same meaning as the term “electronic protected health information” in 45 CFR § 160.103.
- f. “Electronic Transactions Rule” shall mean the final regulations issued by HHS concerning standard transactions and code sets under 45 CFR § 160 and § 162.
- g. “Enforcement Rule” shall mean the Enforcement Provisions set forth in 45 CFR § 160.
- h. “Genetic Information” shall have the same meaning as the term “genetic information” in 45 CFR § 160.103.
- i. “HHS” shall mean the Department of Health and Human Services.
- j. “HIPAA Rules” shall mean the Privacy Rule, Security Rule, Breach Notification Rule, and Enforcement Rule.
- k. “HITECH Act” shall mean the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009.
- l. “Privacy Rule” shall mean the Privacy Standards and Implementation Specifications at 45 CFR § 160 and § 164, subparts A and E.
- m. “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 CFR § 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity pursuant to this BA Agreement.

n. “Required by Law” shall have the same meaning as the term “required by law” in 45 CFR § 164.103.

o. “Security Incident” shall have the same meaning as the term “security incident” in 45 CFR § 164.304.

p. “Security Rule” shall mean the Security Standards and Implementation Specifications at 45 CFR Parts 160 and 164, subparts A and C.

q. “Subcontractor” shall have the same meaning as the term “subcontractor” in 45 CFR § 160.103.

r. “Transaction” shall have the meaning given the term “transaction” in 45 CFR § 160.103.

s. “Unsecured Protected Health Information” shall have the meaning given the term “unsecured protected health information” in 45 CFR § 164.402.

II. Responsibilities of Business Associate.

With regard to its use and/or disclosure of PHI, Business Associate agrees to:

- a. use and/or disclose PHI only as necessary to provide the services, as permitted or required by this Agreement or as otherwise required by law;
- b. implement and use appropriate administrative, physical and technical safeguards to prevent the use or disclosure of PHI other than as permitted or required by this Agreement and to reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that Business Associate creates, receives, maintains or transmits on behalf of Client;
- c. without unreasonable delay, report to Client (i) any use or disclosure of PHI not provided for by this Agreement of which it becomes aware; and/or (ii) any security incident of which Business Associate become aware, except that, for purposes of this reporting requirement the term “Security Incident” does not include inconsequential incidents that occur on a frequent basis such as scans or “pings” that are not allowed past Business Associate’s firewall. Business Associate will provide any notice of privacy breaches or security incidents as mandated by the HIPAA Privacy and Security Rules to Client.
- d. require all of its subcontractors and agents that create, receive, maintain or transmit PHI to agree, in writing, to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate.
- e. make available its internal practices, books and records relating to the use and/or disclosure of PHI to Client for purposes of determining Business Associate’s compliance with the HIPAA Privacy and Security Rules to the Secretary of Health and Human Services, for purposes of the Secretary determining Business Associate or Client’s compliance with the HIPAA Privacy and Security Rules.
- f. document and within thirty (30) days after receiving a written request from Client, make available to Client, information necessary for Client to make an accounting of disclosures of PHI about an individual, in accordance with 45 CFR §164.528.

- g. notwithstanding subsection (f), in the event that Business Associate, in connection with the Services, uses or maintains an Electronic Health Record of PHI of or about an individual, then Business Associate shall, when and as directed by Client, make an accounting of disclosures of PHI directly to an individual within thirty (30) days, in accordance with the requirements for accounting for disclosures made through an electronic health record.
- h. provide access within thirty (30) days after receiving a written request from Client for PHI that constitutes a Designated Record Set about an individual, which is sufficient to allow Client to comply with the requirements of 45 CFR § 164.524.
- i. to the extent that PHI in Business Associate's possession constitutes a Designated Record Set, make available within thirty (30) days after a written request by Client, PHI for amendment and incorporate any amendments to the PHI as directed by Client.
- j. request, use and/or disclose only the minimum necessary amount of PHI necessary to accomplish the purpose of the request, use or disclosure.
- k. not directly or indirectly receive remuneration in exchange for any PHI and not make or cause to be made any fundraising communication that is prohibited by 42 USC §17935 or §17936.
- l. maintain appropriate insurance to cover HIPAA violations.
- m. notify Client within ten (10) days of discovery if there is a breach by either Business Associate or one of its agent of unsecured PHI, as defined in and consistent with, the HITECH Act and any regulations or guidance issued thereunder. Such notification shall be made in writing, within ten (10) days of discovery and include the names, circumstances, date of breach and date of discovery, information breach, any steps the individuals should take to protect themselves, any steps Business Associate is taking to investigate the breach, mitigate losses and protect against future breaches, and a contact person.
- n. if requested by Client, Business Associate shall notify the individuals involved or the media or the US Department of Health and Human Services, as applicable.

III. Responsibilities of Client.

In addition to any other obligations set forth in the Agreement, Client:

- a. shall identify which of the records it furnishes to Business Associate to accomplish the Services.
- b. shall provide to Business Associate only the minimum PHI necessary to accomplish the Services.
- c. in the event that the Client is required to comply with a request to restrict the use and/or disclosure of PHI, or receives revisions to a notice of privacy practices, or is notified by an individual for confidential communications, Client agrees not to provide Business Associate any PHI that is subject to any of those restrictions or limitations to the extent any may limit Business Associate's ability to use and/or disclose PHI as permitted or required under this BA Agreement unless Client notifies Business Associate of the restriction or limitation and Business Associate agrees to honor the restriction or limitation.

- d. shall be responsible for using administrative, physical and technical safeguards at all times to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Business Associate pursuant to the Agreement, including this BA Agreement, in accordance with the standards and requirements of HIPAA, until such PHI is received by Business Associate.
- e. shall obtain any consent or authorization that may be required by applicable federal or state laws and regulations prior to furnishing Business Associate the PHI.

IV. Permitted Uses and Disclosures by Business Associate.

Unless otherwise limited in the Agreement or this BA Agreement or applicable law, in addition to any other uses and/or disclosures permitted or required by this BA Agreement, Business Associate may:

- a. make any and all uses and/or disclosures of PHI necessary to provide the Services to Client.
- b. use and disclose to subcontractors and agents the PHI in its possession for its proper management and administration or to carry out the legal responsibilities of Business Associate, provided that any third party to which Business Associate discloses PHI for those purposes provides written assurances in advance that (i) the information will be held confidentially and used or further disclosed only as required by law, (ii) the information will be used only for the purposes for which it was disclosed to the third party, and (iii) the third party promptly will notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached.
- c. de-identify any and all PHI received or created by Business Associate under this BA Agreement, which de-identified information shall not be subject to this BA Agreement and may be used and disclosed on Business Associate's own behalf, all in accordance with the de-identification requirements of the Privacy Rule.
- d. use or disclose PHI as required by law.

V. Termination.

- a. This BA Agreement shall remain in effect for the term of the Agreement. Upon termination of the Agreement, Business Associate will retain no copies of the PHI and will, with thirty (30) days, return or destroy such, including all PHI in possession of Business Associate's agents or subcontractors. If such return or destruction is not feasible, Business Associate will continue to extend the protections, limitations and restrictions afforded to PHI hereunder.
- b. Upon a party's material breach or violation of this BA Agreement, then the non-breaching party shall provide written notice of the breach or violation to the other party that specifies the nature of the breach or violation. The breaching party must cure the breach or end the violation on or before thirty (30) days after receipt of written notice. In the absence of a cure reasonably satisfactory to the non-breaching party within the specified timeframe, then the non-breaching party may terminate the Agreement, including this BA Agreement.

VI. Miscellaneous.

- a. The parties agree to amend this BA Agreement to comply with any amended, updated or new applicable laws or requirements of the HITECH Act, where necessary.

- b. The parties intend that Business Associate is an independent contractor and not an agent of the Client.
- c. All notices and communications required by this BA Agreement shall be in writing and shall be given by first-class registered mail, postage prepaid or by electronic mail to the address that each party specifies in writing.
- d. This BA Agreement constitutes the entire agreement between the parties with respect to its subject matter and constitutes and supersedes all prior agreements, representations and understandings of the parties, written or verbal, with regard to this same subject matter.