



MARSH & McLENNAN
AGENCY

NORTH SLOPE BOROUGH SCHOOL DISTRICT

EMPLOYEE HEALTH & BENEFITS CONSULTING AGREEMENT

BETWEEN NORTH SLOPE BOROUGH SCHOOL DISTRICT AND MARSH & McLENNAN AGENCY
LLC

Employee Health & Benefits Consulting Agreement

AGREEMENT

This Agreement is entered into by and between Marsh & McLennan Agency LLC, located at 1031 W 4th Avenue, Suite 400, Anchorage, AK 99501, hereinafter referred to as “MMA”, North Slope Borough School District, located at P.O. Box 169, Barrow, AK 99723 hereinafter referred to as “Client”. MMA and the Client may also be referred to collectively as the “parties”.

PERFORMANCE STANDARDS

MMA shall discharge its duties pursuant to this Agreement in accordance with directions and instructions of Client. MMA shall act with the generally acceptable professional standards and within applicable law, always acting honestly, in good faith and in the best interest of Client. MMA shall exercise the degree of care, diligence, and skill of a prudent and experienced insurance broker and consultant.

SERVICES

PLAN DESIGN CONSULTATION

- Provide analysis of existing plans; offer new ideas, including alternative designs; and provide cost estimates and supporting recommendations.
- Educate Client on benefit trends and industry best practices.
- Advise Client on the impact of pending as well as enacted legislation and regulations, which affect benefits and/or the administration of the plans.
- Keep abreast and provide information on new benefit developments and options.
- Assist in the implementation and administration of new programs or changes to existing programs.
- Benchmark plans against competitive environment as requested.
- Create a three- to five-year strategy.

MARKETING & RENEWAL

- Work with Client to develop objectives and plan designs to include in Requests for Proposals (RFPs).
- Prepare detailed specifications for RFPs.
- Submit RFPs to insurance markets/vendors.
- Review each proposal. Use our influence in the marketplace to leverage and negotiate the best rates and conditions per Client specifications.
- Prepare an evaluation of the proposals to simplify the comparative differences and important components of the proposals. Evaluation will include recommendations to the Client concerning such proposals.
- Evaluate renewals proposed by insurance companies. Negotiate rates with companies after analyzing current experience, retention, previous year’s financial results, and the competitive marketplace.
- Analyze current plan costs of all benefits compared to prior year’s costs.
- Year End Accounting – review policy year financial summaries for complete cost breakdown. Analyze costs including premium, claims, reserve levels, expenses, pooling levels and overall effectiveness of funding arrangement.

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- Assist with preparation of open enrollment communication materials and organizing vendor participation at open enrollment meetings.
- Attend and conduct open enrollment meetings as requested.
- MMA may utilize the services of other intermediaries to assist in the marketing of the Client's program (including brokers in the London and other markets), when in MMA's professional judgment those services are necessary or appropriate with disclosure to Client. Such intermediaries may be MMA affiliates. The compensation of such intermediaries is not included in MMA's compensation under this Agreement and will be paid by insurers/providers out of paid premiums.

ADMINISTRATION

- Provide a team that will be available and responsive on a timely basis.
- Attend insurance committee/Human Resource meetings and other meetings, as necessary.
- Assist with claims questions, issues, and appeals.
- Conduct claim review meetings to identify trends and forecast future costs.
- Provide monthly self-funded claim report updates if experience data is available.
- Provide actuarial rate setting and plan design pricing for self-funded plans.
- Assist with problems regarding billing, enrollments, terminations, and reconciliations.
- Upon request, evaluate and assist in the management of voluntary benefit products.
- Notify carriers of any plan change or administrative changes.
- Monitor plan carriers and providers to ensure smooth administration.
- Review contracts, plan documents, insurance policies, and other documents for applicability, accuracy, and consistency. Prepare and deliver necessary reports to Client.
- Advise Client with respect to available technology platforms to support delivery and administration of its employee benefit plans.
- Assist Client in the development of paper and/or web-based communication strategies.
- Act as a liaison between Client and carriers/providers for the lines of coverage and services that MMA has placed or obtained on Client's behalf or for which MMA is named as the broker of record.
- Assist the Client in connection with issues relating to interpretation of insurance policies/contracts placed by MMA.
- Assist in creation of Summary Plan Descriptions.

REGULATORY COMPLIANCE

- Legislative Notification – keep Client abreast of proposed and enacted legislation and regulations through newsletters and ongoing communication. Consult on implications of enacted legislation and recommend benefit or funding revisions when appropriate.
- Regulatory Compliance – provide updates on government laws and regulations promulgated by federal and state agencies for compliance purposes.
- Seminars/Workshops – offer seminars hosted by in-house and outside resources and professionals.

ADDITIONAL SERVICES

- Coordinate the collection of Schedule information for Form 5500 filings.

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DESCRIPTION OF MMA'S STOP LOSS INSURANCE COVERAGE PLACEMENT RESPONSIBILITIES:

By retaining MMA, Client hereby authorizes MMA to perform the following services on Client's behalf with respect to Client's Stop Loss insurance coverage placement:

- Meet with Client to develop a stop loss placement strategy that meets Client's stated objectives.
- Request and negotiate the terms and conditions of the stop loss insurance renewal from the current insurer and present the insurer's proposed renewal package to Client.
- If necessary, conduct a stop loss marketing based on a list of stop loss carriers selected by Client and Client's desired terms of coverage.
- If necessary, facilitate communication between Client's medical and prescription drug vendors and stop loss insurer to establish reporting responsibilities and timing of data required for the purpose of securing stop loss coverage.
- Follow up with insurance carrier for timely issuance of policies and contracts.
- Review policies and contracts for accuracy and conformity to specifications provided by Client in the placement strategy meeting.
- MMA will assist Client with access to the stop loss insurance marketplace and use commercially reasonable efforts to place stop loss policies selected by Client on Client's behalf, if so instructed.
- If requested, MMA shall transmit information and data supplied by Client or on Client's behalf without independently verifying the accuracy, completeness, or timeliness of the data to the stop loss insurer.

IMPORTANT LIMITATIONS ON MMA'S MARKETING OF CLIENT'S STOP LOSS POLICY

MMA does not make any representations about an insurer's or MGU's payment or claims denial practices. MMA does not warrant in any way that all claims submitted to the stop loss carrier will be approved and ultimately reimbursed. Also, the terms and conditions of covered claims for the stop loss insurance policy may not fully correlate with the benefits covered under Client's benefits program. MMA shall use all information and data supplied by Client or on Client's behalf without independently verifying the accuracy, completeness, or timeliness of it. MMA will not be responsible for any delays or liability arising from missing, delayed, incomplete, inaccurate, or outdated information and data.

RESPONSIBILITIES OF CLIENT

Client will furnish all necessary information and execute all necessary agreements with MMA, any applicable third party vendors and any carriers to implement the Services. Client shall furnish MMA with data necessary for discharge of MMA's duties set forth in this document. Client shall be solely responsible for the accuracy and completeness of all information furnished to MMA and/or insurers, and Client shall sign any required application for insurance. MMA shall not be responsible to verify the accuracy or completeness of any information that Client provides, and MMA shall be entitled to rely on that information. MMA shall have no liability for any errors, deficiencies, or omissions in any services provided to Client, including the placement of insurance on Client's behalf, which is based on inaccurate or incomplete information provided to MMA. Client understands that the failure to provide all necessary information to an insurer, whether intentional or by error, could result in the impairment or voiding of coverage. Client agrees that it will review all policy documents provided to it by MMA and will advise MMA of anything which Client believes is not in accordance with the negotiated coverage and terms within thirty (30) days following receipt.

With regard to stop loss, Client will provide all data/information as required by the stop loss insurer in a timely manner and Client is responsible for the accuracy and completeness of such data and information. Additionally, Client is responsible for the timely submission of claims requests and confirmation that

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appropriate reimbursements have been issued by the stop loss insurer. Furthermore, Client is responsible for disclosing all potentially high exposure claims as defined by the stop loss insurer and for reviewing and executing, where required, a confirmation of coverage letter before binding of coverage.

Client will inform MMA at the commencement of work under each Agreement (and thereafter in the event of any change) as to whether or not Client or any of Client's Affiliates are subject to any restrictions or obligations directly relevant to the Services as a result of or in connection with having received any federal financial assistance in connection with any federal law or program, including, but not limited to, the American Recovery and Reinvestment Act of 2009 and the Emergency Economic Stabilization Act of 2008, including the Troubled Assets Relief Program. In the event that Client or Client's Affiliates are subject to such restrictions or obligations, Client will also promptly describe such restrictions and obligations to MMA in writing in reasonable detail and make an expert (including internal or external counsel) available to MMA for additional clarification that MMA reasonably requests regarding the analysis or interpretation of any such restrictions or obligations. Client agrees that MMA will be entitled to rely on, and have no liability for, the accuracy and completeness of the information, analysis, or interpretation that is provided to MMA in connection with the foregoing.

The failure to perform Client's duties under this Agreement will be deemed a waiver of Client's right to receive the related Services hereunder.

SUBCONTRACTORS

MMA may need to utilize various subcontractors ("Subcontractors") in the course of provision of the Services to assist MMA in such tasks as printing and mailing, development of interactive tools, graphic design, etc. Client consents to MMA's use of the Subcontractors and further acknowledges and agrees that MMA may provide such Subcontractors with the personal information of Client's employees (such as, but not limited to, Name, Address, Telephone Number, Date of Birth and Social Security Number) and/or Protected Health Information as described in Appendix B, section 3, including MMA's work product for Services performed pursuant to this agreement, on a confidential and need-to-know basis for the purposes contemplated by this Agreement.

COMPENSATION

MMA's base compensation (consulting retainer) will be \$40,000 annually and commissions received from carriers/providers.

MMA will bill Client quarterly with such invoices due within thirty (30) days of Client's receipt of an undisputed invoice. If any invoice remains unpaid after longer than ninety (90) days from the date of the invoice, MMA may either suspend the provision of the services until payment is received, or terminate this agreement with immediate effect.

Client will be billed pursuant to that certain Billing and Collection Agreement with Client's carriers and/or third party administrator. If Client fails to make payments more than thirty (30) days after the due date, MMA may exercise the right to claim interest for late payment. If such failure to pay extends beyond ninety (90) days, MMA may either suspend the provision of the services until payment is received or terminate this agreement with immediate effect.

If this Agreement is renewed in subsequent years, both parties will evaluate compensation terms to arrive at a mutually agreed upon base compensation. Additional compensation may be required for services provided outside of the scope of this Agreement, as agreed by both parties in advance of the work being performed.

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AMENDMENT

Except with respect to a change in address for notices, this Agreement may be amended only with the consent of the parties. All amendments must be in writing and must be approved by MMA and by the Client.

TERMS

This Agreement is effective July 1, 2020 – June 30, 2021, and may be renewed each year upon mutual written agreement of the parties unless otherwise terminated as provided herein.

TERMINATION

Both parties may terminate this Agreement upon thirty (30) days written notice to the other. Said notice shall be sent by certified or registered mail. In the event of such termination by the Client, MMA shall be paid for professional services rendered up to the date of such termination. The Client's right to terminate under this paragraph shall be in addition to any other rights reserved to the Client under this Agreement. Said termination by either party shall not be deemed to be a breach of this Agreement and/or tortious conduct.

INDEMNIFICATION

Client shall indemnify, defend, and hold MMA harmless from any and all liability, losses, costs, damages, or expenses, including reasonable attorneys' fees, and costs caused by, resulting from, or arising from the negligent acts or omissions of Client, its representatives, employees, and officers.

MMA shall indemnify, defend, and hold Client harmless from any and all liability, losses, costs, damages, or expenses, including reasonable attorneys' fees, and costs caused by, resulting from, or arising from the negligent acts or omissions of MMA, its representatives, employees, and officers.

INDEPENDENT CONTRACTOR

While in the performance of this Agreement, MMA is an independent contractor and not an officer, agent, or employee of the Client.

BROKER OF RECORD

Client shall appoint MMA as its exclusive insurance broker with respect to Client's insurance requirements for the services provided by MMA pursuant to this Agreement. This appointment rescinds all previous appointments, and the authority associated with such appointment shall remain in full force and effect until cancelled in writing. MMA shall not be responsible for any claims, liabilities, injuries, suits and demands and expenses of any kind which may result or arise out of any act or omission of the broker of record previously designated by Client.

SEVERABILITY

It is the intent of the parties that the provisions of this Agreement shall be enforced to the fullest extent permitted by applicable law. To the extent that the terms set forth in this Agreement or any word, phrase,

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clause or sentence is found to be illegal or unenforceable for any reason, such word, phrase, clause or sentence shall be modified, deleted or interpreted in such a manner so as to afford the Party for whose benefit it was intended the fullest benefit commensurate with making this Agreement as modified, enforceable and the balance of this Agreement shall not be affected thereby, the balance being construed as severable and independent.

COMPENSATION DISCLOSURE

Please see [Appendix A](#) for MMA's standard compensation disclosure, which may be updated from time to time.

PROTECTED HEALTH INFORMATION

MMA shall handle "Protected Health Information" (as defined in the Federal HIPAA privacy regulations, 45 C.F.R. Parts 160, 164) as a business associate of Client in accordance with the provisions of the Business Associate Agreement between Client (acting on behalf of the Client's Group Health Plans), and MMA in [Appendix B](#).

DISCLAIMERS

MMA does not speak for any insurer or other service provider, is not bound to utilize any particular insurer or other service provider, and is not authorized to make binding commitments on behalf of any insurer or other service provider, except under special circumstances which MMA shall endeavor to make known to Client. MMA shall not be responsible for the solvency of any insurer or its ability or willingness to pay claims, return premiums or other financial obligations or for the solvency or ability of any service provider to provide service. Insurance carriers or service providers with which Client's risk or business is placed at Client's direction will be deemed acceptable to Client, in the absence of contrary instructions from Client. MMA does not guarantee or make any representation or warranty that insurance can be placed on terms acceptable to Client. MMA will not take any action to replace Client's insurers unless Client instructs MMA to do so. Client acknowledges that, in performing services hereunder, MMA and its affiliates or subcontractors are not acting as a fiduciary for Client, except to the extent required by applicable law, nor as an "administrator" within the meaning under applicable law, including the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Any reports or advice provided by MMA should not be relied upon as accounting, legal, regulatory or tax advice. In all instances, MMA recommends that Client seek its own advice on such matters from professional accounting, legal, regulatory and tax advisors.

MMA will not independently verify or authenticate information (not originating from MMA) that is necessary to prepare proposals or underwriting submissions and other documents relied upon by insurers/providers. Client shall be solely responsible for the accuracy and completeness of such information and other documents furnished to MMA and/or insurers/providers and shall sign any application for coverage. Client understands that the failure to provide complete, accurate, up-to-date, and timely documentation and information to MMA, an insurer, employee benefit provider or third party vendor, whether intentional or by error, could result in impairment or voiding of coverage or service.

MMA will not be responsible for the adequacy or effectiveness of any insurance programs or policies implemented by another broker, or any acts or omissions occurring prior to MMA's engagement.

MMA may provide to Client information and services related to insurance regulatory and insurance tax issues relating to Client's insurance program. Any reports or advice provided by MMA will be based on publicly available information and MMA's experience as an insurance broker and risk consultant in dealing with such matters for other clients and should not be relied upon as accounting, regulatory or tax

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advice. In all instances, MMA recommends that Client seek its own advice on accounting, regulatory and tax matters from professional legal and tax advisers.

MMA may provide Client with modeling and/or business analytics services, including hazard loss and catastrophe modeling, loss forecasting and triangles, adverse event simulation, scenario and portfolio risk analysis, decision mapping, risk bearing and risk retention tolerance analysis and insurance program evaluation analysis ("Modeling and Analytics"). Modeling and Analytics services will be based upon a number of assumptions, conditions, and factors. If any of them or any information provided to MMA is inaccurate or incomplete or should change, the Modeling and Analytics provided by MMA could be materially affected. These services are subject to inherent uncertainty, and actual results may differ materially from that projected by MMA. They are provided solely for Client's benefit, and do not constitute, and are not intended to be a substitute for, actuarial, accounting or legal advice. MMA shall have no liability to any third party in connection with these services or to Client with regard to any services performed or provided by a third party. Except to Client's insurers in connection with the placement of coverage by MMA, Client shall not share any of MMA's Modeling and Analytics work product with a third party without MMA's prior written consent.

LIMITATION OF LIABILITY

Neither party shall have any liability for any failure or delay in performance of its obligations under this Agreement, other than an obligation to make payment, because of circumstances beyond its reasonable control, including without limitation, acts of God, fires, floods, earthquakes, acts of war or terrorism, civil disturbances, sabotage, accidents, unusually severe weather, governmental actions, power failures, computer/network viruses that are not preventable through generally available retail products, catastrophic hardware failures or attacks on its server.

The aggregate liability of MMA, its affiliates, and its and their employees to Client or its affiliates arising out of or relating to any services on Client's account shall not exceed ten million dollars (\$10,000,000), and in no event shall MMA or its affiliates be liable for any indirect, special, incidental, consequential or punitive damages or for any lost profits or other economic loss arising out of or relating to such services. In addition, Client agrees to waive its right to a jury trial in any action or legal proceeding arising out of or relating to such services. The foregoing limitation of liability and jury waiver shall apply to the fullest extent permitted by law.

MISCELLANEOUS

This Agreement shall be governed by, and interpreted in accordance with, the laws the State of Alaska and will be subject to the exclusive jurisdiction of the courts located in the State of Alaska, without regard to its conflict of laws principles. Each party, on behalf of itself and its affiliates, to the fullest extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury in any action or other legal proceeding arising out of or relating to this Agreement or any services provided by MMA or its affiliates. The waiver applies to any action or legal proceeding, whether sounding in contract, tort or otherwise. Each party, on behalf of itself and its affiliates, also agrees not to include any employee, officer, or director of the other party or its affiliates as a party in any such action or proceeding.

Any notice provided pursuant to this Agreement shall be in writing and must be sent postage pre-paid, certified U.S. mail, return receipt requested, or delivered by overnight commercial courier, and shall be deemed given upon receipt. All notices shall be addressed to the applicable party at its respective address first set forth above or such other address as may be designated on notice to the other party pursuant hereto. This Agreement may be executed and delivered in several counterparts and transmitted by facsimile, a copy of which shall constitute the same as an original.

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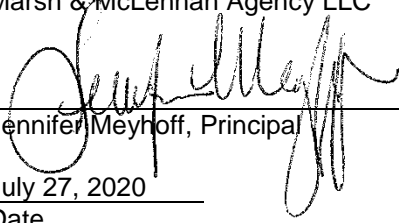
ACCEPTANCE

By:
North Slope Borough School District

Fadil Limani, Financial Consultant

Date

By:
Marsh & McLennan Agency LLC



Jennifer Meyhoff, Principal

July 27, 2020

Date

Copy:
Curtis Hebert

APPENDIX A

COMPENSATION DISCLOSURE

Marsh & McLennan Agency LLC (“MMA”) prides itself on being an industry leader in the area of transparency and compensation disclosure. We believe you should understand how we are paid for the services we are providing to you. We are committed to compensation transparency and to disclosing to you information that will assist you in evaluating potential conflicts of interest.

As a professional insurance producer, MMA and its subsidiaries facilitate the placement of insurance coverage on behalf of our clients. As an independent insurance agent, MMA may have authority to obligate an insurance company on behalf of our clients and as a result, we may be required to act within the scope of the authority granted to us under our contract with the insurer. In accordance with industry custom, we are compensated either through commissions that are calculated as a percentage of the insurance premiums charged by insurers, or fees agreed to with our clients.

MMA engages with clients on behalf of itself and in some cases as agent on behalf of its non-US affiliates with respect to the services we may provide. For a list of our non-US affiliates, please visit <http://global.marsh.com/about/>. In those instances, MMA will bill and collect on behalf of the non-US Affiliates amounts payable to them for placements made by them on your behalf and remit to them any such amounts collected on their behalf.

MMA receives compensation through one or a combination of the following methods:

- **Retail Commissions** – A retail commission is paid to MMA by the insurer (or wholesale broker) as a percentage of the premium charged to the insured for the policy. The amount of commission may vary depending on several factors, including the type of insurance product sold and the insurer selected by the client.
- **Client Fees** – Some clients may negotiate a fee for MMA’s services in lieu of, or in addition to, retail commissions paid by insurance companies. Fee agreements are in writing, typically pursuant to a Client Service Agreement, which sets forth the services to be provided by MMA, the compensation to be paid to MMA, and the terms of MMA’s engagement. The fee may be collected in whole, or in part, through the crediting of retail commissions collected by MMA for the client’s placements.
- **Contingent Commissions** – Many insurers agree to pay contingent commissions to insurance producers who meet set goals for all or some of the policies the insurance producers place with the insurer during the current year. The set goals may include volume, profitability, retention, and/or growth thresholds. Because the amount of contingent commission earned may vary depending on factors relating to an entire book of business over the course of a year, the amount of contingent commission attributable to any given policy typically will not be known at the time of placement.
- **Supplemental Commissions** – Certain insurers and wholesalers agree to pay supplemental commissions, which are based on an insurance producer’s performance during the prior year. Supplemental commissions are paid as a percentage of premium that is set at the beginning of the calendar year. This percentage remains fixed for all eligible policies written by the insurer during the ensuing year. Unlike contingent commissions, the amount of supplemental commission is known at the time of insurance placement. Like contingent commissions, they may be based on volume, profitability, retention, and/or growth.
- **Wholesale Broking Commissions** – Sometimes MMA acts as a wholesale insurance broker. In these placements, MMA is engaged by a retail agent that has the direct relationship with the insured. As the wholesaler, MMA may have specialized expertise, access to surplus lines markets, or access to specialized insurance facilities that the retail agent does not have. In these transactions, the insurer typically pays a commission that is divided between the retail and wholesale broker pursuant to arrangements made between them.
- **Other Compensation** – From time to time, MMA may be compensated by insurers for providing administrative services to clients on behalf of those insurers. Such amounts are typically calculated as a percentage of premium or are based on the number of insureds. Additionally, insurers may sponsor MMA training programs and events.

We will be pleased to provide you additional information about our compensation and information about alternative quotes upon your request. For more detailed information about the forms of compensation we receive, please refer to our Compensation Guide at <https://www.marshmma.com/resource/compensation-guide-for-client.pdf>.

APPENDIX B

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is effective as of 1st day of July, 2020 (hereinafter the "Date") by and between **North Slope Borough School District**, on behalf of North Slope Borough School District's Benefit Welfare Plan (hereinafter "Covered Entity"), and **Marsh & McLennan Agency LLC** (hereinafter "Business Associate").

RECITALS

WHEREAS, the Department of Health and Human Services ("HHS") has promulgated regulations at 45 C.F.R. Parts 160-164, implementing the privacy and electronic security requirements set forth in the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended by the American Recovery and Reinvestment Act of 2009 (Public Law 111-5, ARRA) ("HIPAA");

WHEREAS, Business Associate acknowledges that certain provisions of HIPAA have been amended in ways that directly regulate Business Associate's obligations and activities with respect to Protected Health Information;

WHEREAS, HIPAA provides, among other things, that Covered Entity is permitted to disclose Protected Health Information to Business Associate and allow Business Associate to obtain and receive Protected Health Information, if Covered Entity obtains satisfactory assurances in the form of a written contract that Business Associate will appropriately safeguard the Protected Health Information; and

WHEREAS, Business Associate will create, receive, maintain or transmit certain Protected Health Information in conjunction with the services being provided by Business Associate to Covered Entity (the "Services"), thus necessitating a written agreement that meets the applicable requirements of HIPAA. Both parties have mutually agreed to satisfy the foregoing regulatory requirements through this Agreement.

NOW THEREFORE, Covered Entity and Business Associate agree as follows:

1. DEFINITIONS; APPLICABILITY.

- (a) All terms not defined herein shall have the meaning ascribed to them in HIPAA.
- (b) This Agreement shall apply only to the extent that Business Associate creates, receives, maintains, or transmits Protected Health Information for or on behalf of Covered Entity.
- (c) HITECH Act, "HITECH Act" shall mean Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- (a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as Required by Law.
- (b) Business Associate agrees to use commercially reasonable and appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement.

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- (c) Business Associate agrees to report to Covered Entity any use or disclosure of Protected Health Information not provided for by this Agreement of which it becomes aware. In event of a Breach of Unsecured Protected Health Information by Business Associate or any of its officers, directors, employees, or subcontractors, Business Associate shall promptly notify Covered Entity in accordance with 45 C.F.R. 164.410.
- (d) Business Associate and Covered Entity agree to mitigate, to the extent practicable, any harmful effect that is known to it arising out of a use or disclosure of Protected Health Information in violation of the requirements of this Agreement.
- (e) Business Associate agrees to ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate agrees to substantially similar restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- (f) Business Associate agrees to provide access to Protected Health Information in a Designated Record Set, in the time and manner Required by Law, to Covered Entity or, as directed by Covered Entity, to an Individual, in order to meet the requirements under 45 C.F.R. 164.524. Business Associate may impose a reasonable cost-based fee for the provision of copies of Protected Health Information in a Designated Record Set in accordance with 45 C.F.R. 164.524(c)(4).
- (g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set pursuant to 45 C.F.R. 164.526 at the request of Covered Entity or an Individual, and in the time and manner Required by Law.
- (h) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate, on behalf of Covered Entity, available to the Secretary of Health and Human Services ("Secretary"), for purposes of the Secretary determining Covered Entity's or Business Associate's compliance with HIPAA.
- (i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528.
- (j) Business Associate agrees to provide to Covered Entity, upon request and in the time and manner Required by Law, an accounting of disclosures of an Individual's Protected Health Information, collected in accordance with Section 2(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528. If Covered Entity requests an accounting of an Individual's Protected Health Information more than once in any twelve (12) month period, Business Associate will impose a reasonable fee for such accounting in accordance with 45 C.F.R. 164.528(c).
- (k) Business Associate agrees to comply, where applicable, with Subpart C of 45 CFR Part 164 to maintain the security of the Electronic Protected Health Information and to prevent unauthorized uses or disclosures of such Electronic Protected Health Information. Business Associate shall report to the Covered Entity any Security Incident that results in the unauthorized use or disclosure of Protected Health Information of which it becomes aware.

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3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- (a) Business Associate may use or disclose Protected Health Information to perform its obligations and services to Covered Entity, provided that such use or disclosure would not violate HIPAA if done by Covered Entity.
- (b) Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate or as otherwise permitted by HIPAA.
- (c) Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (d) Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity.

4. COVERED ENTITY'S OBLIGATIONS AND PERMISSIBLE REQUESTS.

- (a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. 164.520, as well as any changes to that notice.
- (b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) Covered Entity shall notify Business Associate, in writing, of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522.
- (d) Covered Entity warrants and represents that it shall provide to, or request from, the Business Associate only the minimum Protected Health Information necessary for Business Associate to perform or fulfill a specific function required or permitted hereunder.
- (e) Covered Entity warrants and represents that it shall notify Business Associate if it receives Protected Health Information not relating to Covered Entity and shall immediately destroy and not further use or disclose such Protected Health Information.
- (f) If Protected Health Information is transmitted by electronic transfer or sent in physical media by or on behalf of Covered Entity, Covered Entity shall transmit all such Protected Health Information to Business Associate in an encrypted format, to be mutually agreed by the parties.
- (g) Covered Entity represents and warrants that it has the right and authority to disclose Protected Health Information to Business Associate for Business Associate to perform its obligations and provide services to Covered Entity.
- (h) Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would violate HIPAA, other applicable laws, or Covered Entity's privacy notice, if done by Covered Entity.

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5. TERM AND TERMINATION.

- (a) Term. The provisions of this Agreement shall take effect as of the Effective Date, and shall continue for so long as Business Associate provides the Services.
- (b) Termination for Cause. Upon the parties mutual agreement that there has been a material breach by a party which does not arise from any breach by the other party, the non-breaching party shall provide an opportunity for the breaching party to cure the breach or end the violation and terminate this Agreement if the breaching party does not cure the breach or end the violation within a mutually agreeable time, or immediately terminate this Agreement if cure of such breach is not possible.
- (c) Effect of Termination.
 - (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall request, in writing, Protected Health Information that is in the possession of subcontractors of Business Associate.
 - (2) In the event Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall extend the protection of this Agreement to such Protected Health Information and limit further uses or disclosures to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

6. MISCELLANEOUS

- (a) Regulatory References. A reference in this Agreement to a section in HIPAA means the section as in effect or as amended, and for which compliance is required.
- (b) Amendment. Upon the enactment of any law or regulation affecting the use or disclosure of Protected Health Information, or the publication of any decision of a court of the United States or any state relating to any such law or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, the parties agree to negotiate in good faith to amend the Agreement as necessary to comply with such law or regulation.
- (c) Survival. The obligations of Business Associate under section 5(c)(2) of this Agreement shall survive the termination of this Agreement.
- (d) Interpretation; Entire Agreement. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits both parties to comply with HIPAA. This Agreement shall be subject to the terms and conditions of any agreements regarding the Services; provided, however, that in the event of any inconsistency or conflict between this Agreement and any agreements regarding the Services, the terms, provisions, and conditions of this Agreement shall govern and control. This Agreement and any agreements regarding the Services constitute the complete agreement between the parties relating to the matters specified in this Agreement, and supersede all prior representations or agreements, whether oral or written, with respect to such matters.
- (e) No third party beneficiary. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.