

CONTINUATION ADMINISTRATION CONTRACT

THIS AGREEMENT, made on this ____ day March of 2026, by and between Benefit Extras, Inc. ("Benefit Extras") and the City of Arden Hills ("Employer" and "Plan Administrator").

WHEREAS, Employer has established and maintains certain benefit plans (the "Plans") that must comply with the Internal Revenue Code of 1986 (the "Code"), the Employee Retirement Income Security Act of 1974 ("ERISA"), and/or the Public Health Services Act ("PHSA"); and

WHEREAS, the Plans are required to provide continuation coverage under applicable law; and

WHEREAS, Employer and Plan Administrator desire that Benefit Extras furnish certain services described in this Continuation Administrative Services Agreement (the "Agreement") in the operation and administration of the Plans;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and the exhibits and Addenda, if any, attached hereto, Employer, Plan Administrator, and Benefit Extras hereby agree as follows:

I. Definitions

The following definitions shall apply to this Agreement:

- A. Administrative Services - means those services relating to the administration of the Plans to be performed by Benefit Extras as set forth in this Agreement and the exhibits hereto.
- B. Agreement - means this Continuation Administration Contract and any exhibits attached hereto and any outside agreements specifically incorporated by reference.
- C. Alternative Coverage – means coverage offered as an alternative to Continuation Coverage to induce a Qualified Beneficiary not to elect Continuation Coverage.
- D. Benefit Extras – means Benefit Extras, Inc., a Minnesota corporation (including all of its authorized representatives), an independent contractor designated to perform certain Administrative Services pursuant to this Agreement with respect to the Plans.
- E. Code - means the Internal Revenue Code of 1986 and regulations thereunder, as amended from time to time.

- F. COBRA - means the Consolidated Omnibus Budget Reconciliation Act of 1985 (as it appears in the Code, ERISA, and/or PHSA (as applicable)) and regulations thereunder, as amended from time to time.
- G. Continuation Coverage – means the continuation coverage required to be provided with respect to a Plan under applicable law. Such coverage may include continuation coverage under a group health plan required by COBRA, USERRA, and/or state law and/or continuation coverage under a group term life insurance plan required by state law.
- H. Continuation Coverage Premium – means the premium to be charged to Continuation Participants under a Plan for Continuation Coverage.
- I. Continuation Participant – means any person receiving Continuation Coverage under the Plan(s) in accordance with applicable law. This includes, but is not limited to, Qualified Beneficiaries.
- J. Covered Individual – means an individual who is properly participating in the Plan(s), including those receiving Continuation Coverage.
- K. Effective Date - means the date upon which this Agreement, once fully executed by all parties, is first effective as identified above.
- L. ERISA - means the Employee Retirement Income Security Act of 1974 and regulations thereunder, as amended from time to time. The provisions of this Agreement that reference or relate to ERISA shall be applicable only to the extent the Plan is subject to ERISA.
- M. Employer – means the employer that is the party to this Agreement, as identified above.
- N. Fiduciary – means any person who satisfies the definition of “fiduciary” under applicable law.
- O. HIPAA - means the Health Insurance Portability and Accountability Act of 1996 and regulations thereunder, as amended from time to time.
- P. Insignificant Shortfalls – means payment amounts for Continuation Coverage within the lesser of (i) \$50, or (ii) ten percent (10%) of the actual amount due.
- Q. Named Fiduciary – means the individual or entity identified in Section 402(a)(1) of ERISA (if applicable) with respect to the Plan.

- R. PHSA – means the Public Health Service Act, as may be amended from time to time. The provisions of this Agreement that reference or relate to PHSA shall be applicable only to the extent the Plan is subject to PHSA.
- S. Plan or Plans - means the group health plans and other programs or arrangements of benefits established and maintained by Employer that are subject to Continuation Coverage requirements and with respect to which Benefit Extras provides Administrative Services under this Agreement. Each Plan must be specifically identified in the “COBRA Information Sheet” completed by Employer (or its designee) at the time Benefit Extras begins providing Administrative Services or, if the Administrative Services with respect to the Plan begin at a later date, in a written request from Employer (or its designee) to Benefit Extras.
- T. Plan Administrator – means the person or entity identified in the Plan who is responsible for the overall administration of the Plan.
- U. Qualified Beneficiary – means a Covered Individual who has lost coverage under a Plan as the result of a Qualifying Event and who is entitled to receive Continuation Coverage. Qualified Beneficiary includes, but is not limited to, individuals determined to be “qualified beneficiaries” under COBRA.
- V. Qualifying Event – means the loss of coverage under a Plan on account of an event specifically identified in applicable law as an event triggering a right to Continuation Coverage.
- W. USERRA – means the Uniformed Services Employment and Reemployment Rights Act of 1994 and regulations thereunder, as amended from time to time.

II. Benefit Extras Responsibilities

- A. Status of Benefit Extras. Employer shall not (1) name Benefit Extras as Plan Administrator or a Named Fiduciary in any documents applicable to the Plans, nor (2) hold out to other parties or third parties that Benefit Extras serves in any of the foregoing capacities. In addition, Benefit Extras does not intend to assume any of the administrative duties or responsibilities commensurate with such designations.
- B. Capacity of Benefit Extras. In fulfilling its duties and obligations under this Agreement, Benefit Extras shall act as the administrative agent of the Plans and does not intend to be a Named Fiduciary or Plan Administrator of the Plans. In addition, Benefit Extras shall not be required to participate in, or act in a manner that aids or assists, a breach of a Fiduciary’s duty.

- C. Continuation Coverage Administration. Benefit Extras shall provide services with respect to Continuation Coverage under the Plans as described in this Article II. Benefit Extras will not provide any services regarding administration of the Plans unless such service is specifically described in this Article II or is required under another agreement among Employer, Plan Administrator, and Benefit Extras.
- D. Account Servicing and Employee Communication. Benefit Extras shall provide account management services. Benefit Extras shall make available to Employer a client service representative to respond to questions regarding general administrative issues.
- E. Online Services. Benefit Extras shall offer to Employer the ability to report certain information (e.g., Qualifying Event information, etc.) to Benefit Extras via Benefit Extras' website (the "Website"). Employer must request to use these online services. If Employer requests to use the online services, the parties agree as follows:
1. Employer shall pay the additional fee for such services reflected in Exhibit A (if any), except as provided in Section II.N where a third-party (NFP) has agreed to pay the fees on behalf of Employer.
 2. In order to allow access to the Website, Benefit Extras shall provide Employer with a unique username and password for the Website. Employer is solely responsible for any use of the username and password.
 3. Except for reasonable periods of maintenance, access to the Website shall be available twenty-four (24) hours per day, seven (7) days per week. Benefit Extras will use reasonable efforts to notify Employer in advance of any planned periods of expected downtime. Employer recognizes that the downtime and the traffic of data through the Internet may cause delays during the download of information to the Website and shall not hold Benefit Extras liable for delays that result from downtime or that are ordinary in the course of Internet use, or for any disruption or delay that is outside the control of Benefit Extras using reasonable commercial efforts.
 4. Benefit Extras has made and will make reasonable efforts to ensure that the Website will be available as provided in this Agreement. Notwithstanding the foregoing, Employer acknowledges, understands and agrees as follows:

- (a) That the Internet is not an error-free environment, Internet access to the Website is not guaranteed by Benefit Extras to be uninterrupted or error free, access to the Website is subject to limitations, delays and problems inherent with the Internet and electronic communications, and Benefit Extras disclaims any and all warranties that the Website will meet Employer's requirements or that the Website will be uninterrupted, timely, secure or error-free;
- (b) That Benefit Extras shall not be liable for any loss, injury, claim, liability, or damage of any kind resulting in any way from: (1) any errors in or omissions from the Website; (2) the unavailability or interruption of the Website or any features thereof; (3) Employer's use of the Website; (4) the loss or corruption of any data or equipment in connection with the Website; (5) any content retrieved from the Internet even if retrieved or linked to from within the Website; or (6) any content or information retrieved or accessed as a result of Employer utilizing any third party links made available on the Website.

5. The parties shall use reasonable efforts to take precautions against the contamination of their respective systems and computer files with software viruses, worms or other malicious agents that may reside within files transmitted through the Website. At a minimum, such precautions shall include the installation, upgrading and use of commercial virus detection software to scan files and documents transmitted via the Website. Additionally, the parties shall use reasonable efforts to identify and to correct or remove any document or file that may have infected data or contain viruses or other malicious agents. Benefit Extras reserves the right to delete infected documents, files or programs, and Benefit Extras shall have no liability to Employer, or the sender or intended recipient of infected materials for such action. However, no precautions or virus detection software is or can be effective against all viruses, and the parties shall have no liability with regard to any contamination of files, documents, or the Website.

F. Recordkeeping. Benefit Extras shall keep all Plan records related to the Administrative Services, including records of:

- 1. all Qualifying Events of which it is notified;
- 2. all notices sent and received by it regarding Continuation Coverage;
- 3. any acceptance or rejection of Continuation Coverage;

4. the Continuation Coverage Premium, as determined by Employer, and the payment by Continuation Participants of the cost of Continuation Coverage;
 5. the length of each Continuation Participant's Continuation Coverage; and
 6. the offer of any required conversion coverage (if any).
- G. General Notices. Benefit Extras shall, based upon information provided by Employer, issue a general COBRA notice to all individuals who enroll in the Plan(s) subject to COBRA coincident with or subsequent to the Effective Date. Benefit Extras is entitled to rely upon the information provided by Employer and is under no obligation to independently verify such information.
- H. Continuation Coverage Eligibility, Notification of Right to Elect, and Notification of Unavailability. Benefit Extras shall determine if a Qualifying Event has occurred based upon information provided to it by Employer and/or the person making the claim for Continuation Coverage. Such determinations regarding claims shall be made in accordance with the written terms and conditions of the Plan. With respect to this responsibility, Benefit Extras is entitled to rely upon the information provided by Employer and/or person making the claim and is under no obligation to independently verify such information. If Benefit Extras determines a Qualifying Event has occurred, Benefit Extras will generate and mail to the Qualified Beneficiaries any notices and/or election forms required under applicable law or otherwise necessary to facilitate the provision of Continuation Coverage.

If Benefit Extras determines no Qualifying Event has occurred, or a Covered Individual is not entitled to Continuation Coverage or an extension of Continuation Coverage, if required by COBRA or other applicable law, Benefit Extras shall notify any person whose claim for Continuation Coverage is denied of the reasons for the denial and of the person's rights, if any, to have the denial reviewed in accordance with the terms and provisions of the Plan. The notification and review will be in a manner agreed upon by Employer and Benefit Extras. Benefit Extras will refer to Employer and Plan Administrator any claim or class of claims specified by them in writing as well as any claim that is disputed after the initial denial. Employer and/or Plan Administrator shall have final discretionary authority to make all determinations regarding Continuation Coverage under the Plan.

Notices described herein will be provided based upon the address information provided by Employer.

- I. Reinstatement of Coverage. If the Qualified Beneficiary elects Continuation Coverage (or is entitled thereto without an election) and pays any required premiums within the required timeframes with respect to any Plan, Benefit Extras shall complete and submit any required documentation to insurance carriers and/or third party service providers regarding reinstatement of coverage under such Plan for Continuation Coverage purposes. Benefit Extras shall provide the services described in this paragraph unless Employer has notified Benefit Extras, in writing, that such services need not be provided.

- J. Termination of Continuation Coverage. Unless Employer has notified Benefit Extras, in writing, that such services need not be provided, Benefit Extras shall complete and submit any required documentation to insurance carriers and/or third party services providers regarding termination of a Continuation Participant's Continuation Coverage under a Plan, including, but not limited to, termination due to expiration of the required continuation period or failure to timely pay premiums. Benefit Extras shall also notify impacted Continuation Participants of the termination of Continuation Coverage, regardless whether such notification is required by applicable law. If such coverage is available, Benefit Extras shall also notify Continuation Participants of the right to elect conversion coverage upon termination of Continuation Coverage.

- K. Collection of Continuation Coverage Premiums; Insufficient Premiums.
 - 1. Unless the Continuation Participant is not required to pay Continuation Coverage Premiums or Employer has directed Benefit Extras to not provide coupons, Benefit Extras shall provide Continuation Coverage Premium coupons to Continuation Participants. Unless the Continuation Participant is not required to pay Continuation Coverage Premiums or Employer is collecting such premiums directly, Benefit Extras shall collect payments of Continuation Coverage Premiums in accordance with the procedure selected in Exhibit A. If it selects the "TPA Account" option in Exhibit A, Employer acknowledges that it has directed Benefit Extras to use that Continuation Coverage Premium collection approach and that it has not relied on any representations or advice from Benefit Extras in making the decision to use that approach. In accordance with Section V.D., Benefit Extras shall have no responsibility or liability with respect to any violation or alleged violation of the ERISA trust requirement that arises from using the "TPA Account" option described in Exhibit A pursuant to Employer's directions. In addition, Employer's indemnification obligation described in Section V.B. shall apply with respect to Employer's decision to use this approach in the

event using the approach results in a violation or alleged violation of the ERISA trust requirement.

2. If Benefit Extras is collecting Continuation Coverage Premiums with respect to a Continuation Participant, Benefit Extras shall prepare and send a notice of an insufficient premium payment to the Continuation Participant within one (1) business day of receipt of an insufficient Continuation Coverage Premium payment, provided Employer has not directed Benefit Extras to accept Insignificant Shortfalls and the insufficient premium payment constitutes an Insignificant Shortfall.
- L. Open Enrollment. Benefit Extras shall distribute annual enrollment materials to Qualified Beneficiaries and Continuation Participants entitled to participate in open enrollment during the applicable annual open enrollment period and answer questions from Qualified Beneficiaries and Continuation Participants regarding open enrollment. At the conclusion of the open enrollment period, Benefit Extras shall provide to Employer and the applicable insurance carriers and/or third-party service providers enrollment and/or election information regarding the Qualified Beneficiaries and Continuation Participants. Employer (or its designee) shall provide to Benefit Extras all information necessary to allow such Qualified Beneficiaries and Continuation Participants to participate in open enrollment and Benefit Extras is entitled to rely upon the information provided by Employer (or its designee) and is under no obligation to independently verify such information. Notwithstanding anything herein to the contrary, Benefit Extras shall distribute annual enrollment materials to Continuation Participants only for the Plan or Plans in which they are currently enrolled and to Qualified Beneficiaries only for the Plan or Plans in which they were enrolled at the time of the Qualifying Event.
 - M. Reports. At the end of each month, Benefit Extras will prepare reports detailing the ongoing activities and status for each Qualified Beneficiary and Continuation Participant. Such reports are provided to Employer via email.
 - N. Administrative Materials. Benefit Extras shall prepare documentation relating to Continuation Coverage under the Plans, including, but not limited to, initial notices of rights, election notices, election forms, and various administrative forms.
 - O. Compliance with Applicable Law. Benefit Extras shall comply with applicable federal and state laws and regulations applicable to Benefit Extras' responsibilities under this Agreement.

- P. Subcontractors. Benefit Extras may hire subcontractors to perform any of the services required of it under this Agreement and to act as its designee for purposes of this Agreement.
- Q. Excise Tax Reporting and Payment. Unless required by applicable law, Benefit Extras shall not be responsible for filing IRS Form 8928 and/or paying the excise tax imposed by Section 4980B of the Code with respect to the Plan.

III. Duties of Employer and Plan Administrator

- A. Establishment & Plan Maintenance. Employer shall establish and maintain the Plans. Plan Administrator shall be responsible for the operation and administration of the Plans. In accordance with this Agreement, Benefit Extras shall provide Administrative Services to Employer and Plan Administrator in connection with the operation and administration of the Plans.
- B. Determination of Application of Continuation Laws. Employer shall have sole responsibility for determining to which Continuation Coverage laws it and its benefit plans are subject, including, but not limited to, whether it is entitled to the small plan exemption available under COBRA. Upon execution of this Agreement, Employer shall notify Benefit Extras of the Continuation Coverage laws applicable to the Plans and shall notify Benefit Extras if, after the Effective Date, the Continuation Coverage laws applicable to the Plans change. The parties shall perform their duties hereunder in accordance with Employer's determination regarding the applicable Continuation Coverage law. Notwithstanding the foregoing, Benefit Extras shall be entitled to rely on the assumption that any action or inaction by Employer or Plan Administrator hereunder is consistent with Employer's determination regarding which Continuation Coverage laws apply to the Plans. Employer and Plan Administrator acknowledge that, in the event the Plans are subject solely to state continuation law, Benefit Extras uses a standard COBRA election notice to notify Qualified Beneficiaries of their right to elect Continuation Coverage. In such a situation, Employer shall be solely responsible for determining whether the notices distributed by Benefit Extras satisfy any applicable requirements of state law and shall indemnify and hold Benefit Extras harmless with respect to any liability arising from the use of COBRA election notices.
- C. Provision of Relevant Information. Employer shall provide to Benefit Extras all relevant information, as determined by Benefit Extras, necessary for Benefit Extras to perform the Administrative Services required by this Agreement. Without limiting the generality of the foregoing, as part of the foregoing responsibility, Employer shall:

1. Provide to Benefit Extras, on data forms provided by Benefit Extras and within ten (10) calendar days of such an event, information regarding Qualifying Events and any other events that could result in an extension or termination of Continuation Coverage. Employer may provide such information via the Website as further described in Section II.E.
2. Provide to Benefit Extras, prior to the date on which Benefit Extras begins to provide services to Employer with respect to Continuation Coverage, a list of all Continuation Participants and all Qualified Beneficiaries who have not yet become Continuation Participants and the dates on which: (i) such individuals experienced Qualifying Events, (ii) such individuals' coverage under the Plan(s) ended, (iii) such individuals were provided an election notice, if any, and (iv) such individuals elected Continuation Coverage, if they have done so.
3. Notwithstanding the foregoing, at Employer's discretion, Employer may provide the information described in paragraph 2 above regarding Qualified Beneficiaries once such Qualified Beneficiaries elect Continuation Coverage and become Continuation Participants.

Benefit Extras is entitled to rely upon all information provided by Employer and is under no obligation to independently verify such information.

- D. Late Notification to Benefit Extras. Benefit Extras' responsibilities under this Agreement are, in some cases, triggered upon the provision of relevant information by Employer. If such information is not provided in a timely manner, Benefit Extras shall use best efforts to quickly perform its responsibilities. However, ultimate responsibility for any consequences, damages, penalties, and the like attributable in whole or in part to the late notification to Benefit Extras remain with Employer. For purposes of this provision, "timely" refers to a period of time specified in this Agreement or, if not specified, the period of time reasonably sufficient for Benefit Extras to perform its responsibilities within the time period required under applicable law.
- E. Cost of Continuation Coverage. Employer and/or Plan Administrator shall determine and notify Benefit Extras of the Continuation Coverage Premium for Continuation Coverage under each Plan as necessary for Benefit Extras to provide accurate notices and payment coupons to Qualified Beneficiaries and Continuation Participants. Employer and/or Plan Administrator shall notify Benefit Extras of any change to the Continuation Coverage Premium within a reasonable time prior to the date on which such change becomes effective so that Benefit Extras can provide accurate notices and payment

coupons to Qualified Beneficiaries and Continuation Participants. If Employer and/or Plan Administrator's notice to Benefit Extras is not timely, Employer and/or Plan Administrator shall hold Benefit Extras harmless with respect to any inaccurate information provided by Benefit Extras and shall compensate Benefit Extras for any corrective action required (e.g., re-distribution of notices or payment coupons to Qualified Beneficiaries and Continuation Participants). Employer and/or Plan Administrator shall indicate whether the Continuation Coverage Premium includes the 2% administrative fee allowed with respect to certain types of Continuation Coverage. Employer and/or Plan Administrator shall also notify Benefit Extras of any special grace periods applicable to the payment of the Continuation Coverage Premium under the Plan. Benefit Extras shall be entitled to rely on such information. Benefit Extras shall be released and relieved of all liability related to, and shall be indemnified by Employer and Plan Administrator with respect to, Employer and/or Plan Administrator's failure to comply with the notice requirement contained herein.

- F. Alternative Coverage. Employer and/or Plan Administrator must notify Benefit Extras of any Alternative Coverage that impacts the services that would otherwise be provided by Benefit Extras under this Agreement. If such Alternative Coverage increases the amount of work Benefit Extras must perform to comply with this Agreement, Benefit Extras reserves the right to charge additional administrative service fees hereunder as agreed by the parties. Benefit Extras shall be entitled to rely on the information provided by Employer and/or Plan Administrator regarding Alternative Coverage.
- G. Continuation Coverage Determinations. Through this Agreement, Plan Administrator delegates to Benefit Extras authority to make the described determinations related to Continuation Coverage under the Plans. If Plan Administrator disagrees with Benefit Extras on a particular determination, Plan Administrator shall immediately notify Benefit Extras, in writing, of such disagreement and direct Benefit Extras regarding the situation. Plan Administrator shall be solely responsible for the final determination of such a claim, which shall be communicated in writing to Benefit Extras. Benefit Extras shall be entitled to rely on the final determination made by Plan Administrator.
- H. Termination of Coverage. Upon the occurrence of an event triggering a loss of coverage under the Plan, Employer or Plan Administrator shall complete and submit to insurance carriers and/or third-party service providers any documentation required to terminate such Covered Individual's coverage under the Plan.

- I. Review of Reports. Employer shall review all reports provided or made available by Benefit Extras (whether via email or through the Website). Employer shall be solely responsible for comparing the information contained in such reports with information provided by the insurance carriers and/or third-party service providers to confirm: (i) reinstatement of coverage for Qualified Beneficiaries electing Continuation Coverage; and (ii) termination of Continuation Coverage for Continuation Participants losing Continuation Coverage. Employer shall notify Benefit Extras of any erroneous information contained in the reports and/or any discrepancies between the information contained in the reports and information provided by insurance carriers and/or third party service providers within a reasonable period of time not to exceed thirty (30) days from the date on which the report is sent by Benefit Extras to Employer. If Employer does not notify Benefit Extras of any errors or discrepancies within such time period, Employer shall be deemed to have approved the accuracy of the reports and Benefit Extras shall be released and relieved of all liability, and shall be indemnified by Employer with respect to, any action or inaction by Benefit Extras that is reflected in the information contained in the reports. If Employer does find an error or discrepancy and notifies Benefit Extras of such error or discrepancy within the time period provided above, Benefit Extras will take immediate steps to address the matter. Notwithstanding anything herein to the contrary, provided it has complied with its responsibilities described in Sections II.I. and II.J., Benefits Extra shall not be responsible for any error or omission of an insurance carrier and/or third party service provider with respect to initiating Continuation Coverage for a Qualified Beneficiary electing such coverage or terminating a Continuation Participant's Continuation Coverage.
- J. FMLA Determinations. Employer shall make determinations regarding FMLA, including, but not limited to, whether FMLA applies. Benefit Extras shall not make determinations regarding FMLA. Furthermore, Benefit Extras shall be entitled to rely upon the information provided by Employer and is under no obligation to independently verify such information.
- K. Continuation Law Compliance. Employer shall be solely responsible for compliance with applicable law regarding the provision of Continuation Coverage (e.g., COBRA, USERRA, and state continuation laws) with respect to any plans sponsored by Employer not specifically identified as a Plan for purposes of this Agreement.
- L. Medical Child Support Order Compliance. Plan Administrator shall be solely responsible for all aspects of compliance with Section 609(a) of ERISA (if applicable) or other applicable law regarding medical child support orders, including, but not limited to, establishing procedures and determining whether a medical child support order is "qualified" under applicable law.

Plan Administrator shall provide notice to Benefit Extras of any Covered Individuals covered under a Plan by virtue of such an order and of any Covered Individuals who cease to be covered under a Plan by virtue of the expiration of such an order. Benefit Extras shall be entitled to rely upon the information provided by Plan Administrator pertaining to such orders.

- M. HIPAA Privacy and Security Compliance. Employer and/or Plan Administrator (or their designees) shall be responsible for all aspects of compliance with the HIPAA privacy and security rules applicable to the Plan, including, but not limited to, distributing notices of privacy practices.
- N. Payment of Administrative Services Fees. In consideration of Benefit Extras' performance of the services described in this Agreement, Benefit Extras' shall be entitled to receive the administrative fees described in Exhibit A. Benefit Extras acknowledges that Employer has made arrangements with a third party (e.g., an insurance broker) to pay the fees charged by Benefit Extras under this Agreement. In such case, Employer shall notify Benefit Extras of such arrangements and Benefit Extras will accept payment from such third party as satisfaction of Employer's obligations hereunder. However, Employer retains ultimate responsibility under this Agreement for payment of the applicable fees.
1. Failure to Pay. Fees are due thirty (30) days from issuance of the invoice. Any failure to pay any such fees by the date upon which they are due may, at Benefit Extras' option, result in Benefit Extras' (1) imposition of a late fee equal to the lesser of (i) 1.5% of the outstanding balance, or (ii) the maximum amount allowed by the usury laws of the applicable state, and/or (2) suspension of performance of its services under this Agreement until such time as such fees are paid or termination of this Agreement.
 2. Fees for Additional Services. In the event additional adjustments that are not part of the normal plan administrative services contemplated by this Agreement are required, Benefit Extras may charge Employer an additional fee commensurate with the additional services provided. Benefit Extras will inform Employer of the amount of the additional fee in advance of conducting the additional administrative services.
 3. Interest Earned by TPA Account. If the "TPA Account" option is selected in Exhibit A for the collection of Continuation Coverage Premiums, Benefit Extras shall retain any interest earned on Continuation Coverage Premiums deposited in Benefit Extras' account (i.e., float) as additional compensation for its services hereunder.

- O. Regulatory Compliance. Employer and Plan Administrator shall be responsible for compliance with applicable laws and regulations pertaining to the Plans. Employer and Plan Administrator shall be responsible for any and all governmental or regulatory charges resulting from Employer's establishment and operation of the Plans. This provision does not relieve Benefit Extras from any statutory or agency requirements placed directly on it as a result of performing services under this Agreement.
- P. Plan Interpretation. Plan Administrator possesses and exercises ultimate authority and responsibility for determining benefits under the Plan and making decisions regarding eligibility for participation, termination of participation, and payment of benefits. This authority and responsibility includes, but is not limited to, final review of Continuation Coverage denials.
- Q. Other Information. Employer or Plan Administrator (including a designee) shall comply with all requests for information made by Benefit Extras reasonably necessary for Benefit Extras to fulfill its duties under this Agreement. Any documentation received by Employer or Plan Administrator (including a designee) that should have been provided to Benefit Extras shall be promptly forwarded to Benefit Extras.
- R. Excise Tax Reporting and Payment. Except as provided in Section II.Q., Employer and Plan Administrator are solely responsible for: (i) determining whether IRS Form 8928 must be filed for the purpose of reporting a violation of COBRA, (ii) preparing and filing Form 8928 (if necessary), and (iii) paying any excise tax imposed by Section 4980B of the Code. Notwithstanding the foregoing, upon request, Benefit Extras may assist Employer and Plan Administrator with its responsibilities under this paragraph.

IV. Records & Information

- A. Maintenance and Access. The parties shall maintain adequate records relating to the terms and operation of the Plans for at least the Plan year to which the records relate and for a seven (7) year period thereafter. Each party shall have access to the records relating to the Plans maintained by the other party during normal business hours and upon reasonable notice and request and subject to applicable laws and regulations. The parties shall maintain the confidentiality of any information relating to Covered Individuals and the Plans in accordance with applicable laws and regulations. At the conclusion of the period for which records are required to be kept under this provision and prior to any modification, destruction or disposal of any records, Benefit Extras shall provide Plan Administrator an opportunity to review the records and obtain copies of any such records. All costs associated with such inspection and copying of records will be paid by Plan Administrator.
- B. Record Use. Benefit Extras, Employer, and Plan Administrator agree that the medical records, names, addresses, telephone numbers, Social Security numbers and other personal information relating to Covered Individuals, which Benefit Extras may obtain as a result of performing administrative services may be collected, maintained and used by Benefit Extras and Plan Administrator as necessary to administer the Plans. Benefit Extras and Plan Administrator may use patient specific and individually identifiable information, as necessary to properly administer the Plans, to defend any claim related to the Plans or to the provision of services under this Agreement, or as otherwise may be permitted by state or federal law. All parties agree that such information shall be considered confidential and protected as required under applicable law.
- C. Confidential Business Information. Benefit Extras, Employer, and Plan Administrator shall each take all necessary steps to protect the other parties' confidential business information. Such information shall not be disclosed to third parties without the express written consent of the other parties unless required by law or court order.
- D. Transfer of Records. When this Agreement ends, Benefit Extras may transfer to Employer, Plan Administrator, and/or any successor administrator those records Benefit Extras determines are reasonably necessary to effectuate a smooth transition of administration of the Plans and any other records Benefit Extras possesses that relate to the Plans. Benefit Extras intends that this transfer of records will satisfy its obligation to maintain such records as described above. Benefit Extras shall provide Plan Administrator an opportunity to review the records and obtain copies of any such records in addition to the records Benefit Extras has identified

as necessary for a smooth transition or otherwise transferred. The details of such transfer including, but not limited to, the means, method and timing, shall be agreed to by the parties. All costs associated with such a record review and transfer will be paid by Employer and/or Plan Administrator.

- E. HIPAA Business Associate. Benefit Extras acknowledges its role as a business associate of certain Plans for purposes of the privacy and security standards under HIPAA. Exhibit B reflects the business associate contractual requirements.

V. Indemnification and Limitation of Liability

- A. Benefit Extras Indemnification. Benefit Extras agrees to indemnify and hold harmless Employer and Plan Administrator from any and all claims, losses, and expenses including, but not limited to, attorney's fees, incurred by Employer and/or Plan Administrator as a result of Benefit Extras' negligence, willful misconduct, fraud, criminal conduct, or breach of this Agreement.
- B. Employer and Plan Administrator Indemnification. Excepting negligence, willful misconduct, fraud, criminal conduct, or breach of this Agreement by Benefit Extras, Employer and Plan Administrator agree to hold Benefit Extras harmless from, and indemnify Benefit Extras against, any and all claims, losses, and expenses, including attorney's fees and taxes (except taxes on Benefit Extras' income), incurred by Benefit Extras arising out of its performance of services under this Agreement.
- C. Limitation of Liability. In performing its obligations under this Agreement, Benefit Extras neither assumes liability for nor otherwise agrees to underwrite the benefits provided by the Plans. Except as otherwise provided herein, Benefit Extras shall have no duty or obligation to defend any legal action or proceeding brought to recover, directly or indirectly, a claim for benefits.
- D. Reliance on Data & Direction. Notwithstanding any provision of this Agreement to the contrary, Benefit Extras is not responsible or liable for any acts or omissions made pursuant to any direction, consent, or other request reasonably believed by Benefit Extras to be genuine and from an authorized representative of Employer or Plan Administrator. Benefit Extras is not responsible or liable for acts or omissions made in reliance on erroneous data provided by Employer or Plan Administrator to the extent Benefit Extras' acts or omissions are attributable to the erroneous data, or for the failure of Employer or Plan Administrator to perform their obligations under this Agreement.

VI. Term and Termination

- A. Term. This Agreement is effective as of the date first written hereinabove until the termination of this Agreement pursuant to this Section VI of the Agreement.
- B. Termination. This Agreement may be terminated by either party at any time by written notice of intention to terminate given to the other party to be effective as of a specified date not less than sixty (60) days from the date such notice is received. Notwithstanding the foregoing, in the event Plan Administrator terminates this Agreement pursuant to this Section VI.B. during any contract term for reasons other than termination for cause, as described in Section VI.C. below, the Plan shall pay to Benefit Extras such transition reporting fees incurred by Benefit Extras to transfer administration to successor Continuation Coverage administrator.
- C. Post-Termination Obligations. Benefit Extras may, as mutually agreed upon by Employer, Plan Administrator and Benefit Extras, provide certain administrative services following the termination of this Agreement.

VII. Miscellaneous

- A. Agreement Amendment. This Agreement may be amended only by mutual agreement in writing executed by all parties, except that Benefit Extras may amend this Agreement to the extent necessary to comply with applicable federal, state or local laws or regulations. Notwithstanding the foregoing, Benefit Extras may amend Exhibit A to this Agreement on an annual basis (as of <MONTH> 1st) by providing to Employer a copy of the amended Exhibit A on or before the preceding November 1st. If Employer provides written notice to Benefit Extras of its objection to such amendment on or before December 1st of the preceding year, such amendment shall not become effective and the Agreement shall terminate effective <MONTH> 1st. Notwithstanding the foregoing, Benefit Extras may revise Exhibit A at any time if any change in the law or regulations imposes upon Benefit Extras greater duties or obligations than are contemplated by this Agreement. Notwithstanding anything herein to the contrary, payment to Benefit Extras by Employer (or a third party on Employer's behalf) of any fees for Administrative Services provided by Benefit Extras on or after the effective date of any amendment to the Agreement proposed by Benefit Extras and communicated to Employer and Plan Administrator will constitute Employer's and Plan Administrator's acceptance of all terms and conditions of such proposed amendment as of the proposed effective date of such amendment.

- B. Notices. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and delivered personally, or sent by first class mail, nationally recognized overnight carrier, electronic transmission, or facsimile transmission, to the party's principal place of business. All such notices, requests, information or other communications shall be deemed to have been given (i) when delivered if personally delivered, (ii) three business days after having been placed in the mail, if delivered by mail, (iii) the business day after having been placed with a nationally recognized overnight carrier, if delivered by nationally recognized overnight carrier, and (iv) the business day after electronic transmission or transmittal by facsimile, if transmitted with electronic confirmation of receipt.
- C. Severability. The provisions of this Agreement are severable. If any provision of this Agreement is held invalid by a court of law or other tribunal, the invalidity of any provision will not affect any other provision of this Agreement.
- D. Survival. The rights and obligations described in Sections IV, V, and VI shall survive termination of this Agreement.
- E. No Waiver of Rights. Nothing in this Agreement shall be deemed to limit or abrogate any right or remedy available under law. The failure of any party to insist upon the strict observation or performance of any provision of this Agreement or to exercise any right or remedy shall not impair or waive any such right or remedy.
- F. Copyrighted Works. Employer acknowledges that Benefit Extras and its agents are the sole copyright owners of all administrative guides and forms and all other materials provided under the terms of this Agreement and that such materials are proprietary to Benefit Extras. Benefit Extras grants Employer a nonexclusive, nontransferable right to copy such materials provided such copies are needed for the sole purpose of collecting and reporting information regarding Covered Individuals or notifying Covered Individuals of information regarding the Plan. Other materials provided by Benefit Extras shall not be copied or reproduced by Employer without Benefit Extras' prior written consent.
- G. Non-Assumption of Liabilities. Unless specifically provided in this Agreement, the parties do not assume the existing or future obligations, liabilities or debts of the other party.
- H. Entire Agreement. This Agreement shall supersede and replace any and all other agreements between the parties relating to the same subject matter. This Agreement contains the entire agreement and understanding of the

parties relating to the subject matter hereof, except as otherwise provided in this Agreement.

- I. Governing Law. The Agreement shall be governed by and interpreted in accordance with applicable federal law. To the extent the federal law does not govern, this Agreement shall be governed by the laws of the State of Minnesota and the courts in such state shall have sole and exclusive jurisdiction of any dispute related hereto and arising hereunder.
- J. Independent Contractors. Benefit Extras shall be construed to be acting as an independent contractor and not as an employee of Employer or Plan Administrator. Benefit Extras, Employer and Plan Administrator shall not have the power or authority to act for or on behalf of, or to bind the other party, except as set forth in this Agreement.
- K. Third Party Beneficiaries. The obligations of each party to this Agreement shall inure solely to the benefit of the other signatory party(ies). Except as expressly provided in this Agreement, no person or entity is intended to be or shall be construed or deemed to be a third party beneficiary of this Agreement.
- L. Successors and Assigns. This Agreement shall be binding on any successors, assigns and subcontractors of the parties authorized under this Agreement.
- M. Audit Rights. The parties agree to cooperate in all reasonable audits. Audit fees shall be payable by the party initiating the audit. Audits shall be conducted using procedures mutually agreed upon by the parties. Results of the audit may be shared with the party being audited at the sole discretion of the party initiating the audit.
- N. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
- O. Force Majeure. Neither party shall be liable for any delay or failure to perform its obligations under this Agreement arising out of a cause beyond its control or without its fault or negligence. Such causes may include, but are not limited to, fires, floods, and natural disasters.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the effective date indicated above.

BENEFIT EXTRAS, INC.

EMPLOYER & PLAN ADMINISTRATOR

Chris Erickson

Authorized Representative of
Benefit Extras, Inc.
Its: President

By: _____
Authorized Representative of Employer
and Plan Administrator
Its: _____

LIST OF EXHIBITS

- A Administrative Fees
- B Business Associate Agreement

EXHIBIT A
Administrative Fees and Optional Services

ADMINISTRATIVE FEES

In accordance with Section III.N., the administrative fees payable under this Agreement are as provided in the following schedule:

Initial Set-Up Fee	\$450.00
Annual Renewal Fee	\$375.00
Annual Online Services Fee	No Charge
Monthly Administration Fee	\$15.00 per Continuation Participant ¹ per month (Employer retains 2% administration fee)
Initial COBRA Notice Fee	\$4.50 per notice
Qualifying Event Notice Fee	\$35.00 per notice
Third-Party EDI File Feed Set Up	\$250/file (2 files max)
Third-Party EDI File Feed Changes	\$125/file ((2 files max)
2% COBRA Administration Fee	Retained by the Employer
Monthly Minimum	No Monthly Minimum

¹ Based upon the number of Continuation Participants as of the first day of the month as reflected in the COBRA Tracking Report. For this purpose, Continuation Participants that are part of a single-family unit are considered a single Continuation Participant.

PREMIUM COLLECTION

- Employer Account. Benefit Extras shall receive checks from Continuation Participants for Continuation Coverage Premiums and shall forward such checks to Employer on a weekly basis. Benefit Extras will not negotiate such checks or deposit such checks into an account owned by Benefit Extras.

- TPA Account. Benefit Extras shall receive checks from Continuation Participants for Continuation Coverage Premiums and shall deposit them as they are received in an account owned by Benefit Extras. Employer acknowledges that such account may include premium payments from continuation participants of plans sponsored by other employers. Until such time as the Continuation Coverage Premiums are transferred to Employer, Benefit Extras shall be deemed to be holding such payments on Employer's behalf. Accordingly, such funds shall belong to Employer (not Benefit Extras) and be subject to Employer's control and the claim of Employer's creditors. On a semi-monthly basis, Benefit Extras shall issue a payment to Employer equal to the amount of Continuation Coverage Premium payments collected by Benefit Extras during the prior two-week period.

EXHIBIT B
Business Associate Agreement

I. Purpose

- A. Business Associate is contractually obligated to provide certain services related to one or more “covered entities” as that term is defined and regulated under HIPAA. The parties to this Business Associate Agreement acknowledge that (1) Business Associate is a “business associate” as that term is defined and regulated under the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”); and (2) Business Associate provides services to one of more “covered entities” as that term is defined and regulated under HIPAA.
- B. This Business Associate Agreement is intended to constitute a “business associate” agreement between the Plan, as a Covered Entity, and the Business Associate, as required under the privacy and security provisions of HIPAA, as amended. Portions of HIPAA apply directly to Business Associate as provided in the Health Information Technology for Economic and Clinical Health Act (“HITECH”), part of the American Recovery and Reinvestment Act of 2009 (“ARRA”). Business Associate’s obligations under this Business Associate Agreement may be the same as, or in some cases in addition to, Business Associate’s own obligations under HIPAA as provided in HITECH.

II. Special Definitions

The definitions applicable under the Master Administration Agreement entered between Business Associate and Plan Sponsor apply to this Business Associate Agreement. In addition, the following definitions apply to terms used in this Business Associate Agreement:

- A. **Business Associate Agreement** – means this Business Associate Agreement, which is an agreement required under 45 C.F.R. Section 164.314(a)(2) between a Business Associate and a Covered Entity.
- B. **ARRA** – means the American Recovery and Reinvestment Act of 2009.
- C. **Breach** – means the unauthorized acquisition, access, use, or disclosure of Protected Health Information regarding a Covered Individual that (1) prior to September 23, 2013, poses a significant risk of financial, reputational, or other harm to such Covered Individual, or (2) on or after September 23, 2013, compromises the security or privacy of the Protected Health Information as determined in accordance with 45 C.F.R. Section 164.402. Notwithstanding the foregoing, a Breach does not include: (1) any unintentional acquisition, access, or use of Protected Health Information by

an employee or individual acting under the authority of Covered Entity or Business Associate and in the scope of the employment or relationship between the employee or individual and Covered Entity or Business Associate, provided such information is not further acquired, accessed, used, or disclosed by any person without authorization; (2) any inadvertent disclosure by an individual who is authorized to access Protected Health Information at Covered Entity's or Business Associate's facility to another similarly situated individual at the same facility, provided such information is not further acquired, accessed, used, or disclosed by any person without authorization; and (3) a disclosure of Protected Health Information in a situation in which Business Associate has a good faith belief that the person(s) to which the unauthorized disclosure was made would not reasonably have been able to retain such information.

- D. **Business Associate** – means Benefit Extras, Inc., a person described in 45 C.F.R. Section 160.103 who performs certain functions on behalf of a Covered Entity.
- E. **Covered Electronic Transactions** – shall have the meaning given to the term “transaction” in 45 C.F.R. Section 160.103.
- F. **Covered Entity** – means the Plan, an entity described in 45 C.F.R. Section 160.103.
- G. **Covered Individual** – means a person who is eligible for payment of certain services or supplies rendered or sold to the person or the person's eligible dependents under the terms, conditions, limitations, and exclusions of the Plan.
- H. **Data Aggregation** – means, with respect to Protected Health Information created or received by Business Associate in its capacity as a business associate (as that term is defined in 45 C.F.R. Section 160.103) of the Plan, the combining of such Protected Health Information by Business Associate with the Protected Health Information received by Business Associate in its capacity as a business associate of another covered entity (as those terms are defined in 45 C.F.R. Section 160.103), to permit data analyses that relate to the health care operations of the respective covered entities.
- I. **Designated Record Set** – means a group of records maintained by or for Covered Entity that is (1) the medical records and billing records about Individuals maintained by or for a covered health care provider, (2) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for Covered Entity, or (3) used, in whole or in part, by or for Covered Entity to make decisions about Individuals. As used herein, the term “Record” means any item, collection,

or grouping of information that includes Protected Health Information and is maintained, collected, used or disseminated by or for Covered Entity.

- J. **Effective Date** – means September 23, 2013, unless specifically noted otherwise herein.
- K. **Electronic Health Record** – means an electronic record of health-related information regarding an Individual that is created, gathered, managed, and consulted by authorized health care clinicians and their staff.
- L. **Electronic Protected Health Information** – shall have the same meaning as the term “electronic protected health information” in 45 C.F.R. 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.
- M. **HITECH** – means Health Information Technology for Economic and Clinical Health Act.
- N. **HHS** – means the United States Department of Health and Human Services.
- O. **Including** – means “including but not limited to.”
- P. **Individual** – shall have the same meaning as the term “individual” in 45 C.F.R. Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. Section 164.502(g).
- Q. **Limited Data Set** – shall have the same meaning as the term “limited data set” in 45 C.F.R. Section 164.514(e)(2).
- R. **Privacy Rule** – means the Standards and Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, subparts A and E and the privacy provisions of HIPAA, as amended.
- S. **Protected Health Information** – shall have the same meaning as the term “protected health information” in 45 C.F.R. 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity. Protected Health Information specifically includes Electronic Protected Health Information and Reproductive Health Protected Health Information.
- T. **Provider** – means a hospital or professional practitioner duly certified or licensed to provide health care services to Covered Individuals.
- U. **Reproductive Health Information** – means anything related to the reproductive systems and to its functions and processes as defined in 45. CFR Section 160.103.

- V. **Required By Law** – shall have the same meaning as the term “required by law” in 45 C.F.R. Section 164.103. It does not include “permitted by law.”
- W. **Secretary** – means the Secretary of the Department of Health and Human Services or his/her designee.
- X. **Security Incident** – shall have the same meaning as the term “security incident” in 45 C.F.R. Section 164.304, unless defined differently in Covered Entity’s policies and procedures for compliance with the Security Rule, which shall be provided to the Business Associate.
- Y. **Security Rule** – means the Security Standards and Implementation Specifications at 45 C.F.R. Part 160 and Part 164, subpart C and the security provisions of HIPAA, as amended.
- Z. **Standards for Electronic Transactions Rule** - means the final regulations issued by HHS concerning standard transactions and code sets under the Administrative Simplification provisions of HIPAA, 45 C.F.R. Part 160 and Part 162.
- AA. **Subcontractor** – means an agent of a Business Associate described in 45 C.F.R. Section 165.103 to whom the Business Associate provides protected health information that the Business Associate creates, receives, maintains, or transmits on behalf of a Covered Entity.
- BB. **Unsecured Protected Health Information** – means Protected Health Information that has not been rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary. As of August 24, 2009, the Secretary has specified the following technologies and methodologies that will render Protected Health Information unusable, unreadable, and indecipherable (i.e., secured Protected Health Information): (1) encryption as described in the Secretary’s guidance and determined by the National Institute of Standard and Technology to meet the standards described in such guidance, or (2) destruction, in accordance with the procedures identified in the Secretary’s guidance, of the media on which the Protected Health Information was stored or recorded.

III. Privacy Provisions

- A. **Introduction.** Business Associate, on behalf of Covered Entity, performs or assists in the performance of functions and activities that may involve

the use, disclosure, receipt and/or creation of Protected Health Information. The "business associate" provisions of the Privacy Rule govern the terms and conditions under which the Business Associate may use or disclose Protected Health Information. In general, Business Associate agrees and intends to act such that (1) Covered Entity can fulfill its responsibilities under HIPAA; and (2) Business Associate can fulfill its contractual obligations under this Business Associate Agreement. In addition, Business Associate specifically acknowledges its direct liability for the failure to comply with certain portions of the Privacy Rule as provided under HITECH and the regulations issued thereunder.

B. Permitted Uses and Disclosures by Business Associate.

1. Except as otherwise limited in this Business Associate Agreement, Business Associate may use or disclose Protected Health Information (i) to perform functions, activities, or services for, or on behalf of, Covered Entity pursuant to any services agreement with the Business Associate, (ii) as permitted or required by this Business Associate Agreement, and (iii) as Required by Law. Business Associate may disclose Protected Health Information to other business associates of Covered Entity, or to business associates of another covered entity that is part of an organized health care arrangement that includes Covered Entity, to the fullest extent allowed under applicable law.
2. Except as otherwise limited in this Business Associate Agreement, Business Associate may use Protected Health Information for the proper management and administration of its business and/or to fulfill its legal responsibilities.
3. Except as otherwise limited in this Business Associate Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of its business, if:
 - i) the disclosures are Required by Law, or
 - ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will be held confidentially and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to such person, and the person will notify the Business Associate of any instances of which the person is aware in which the confidentiality of the information has been breached.

4. Except as otherwise limited in this Business Associate Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. Section 164.504(e)(2)(i)(B).

5. Except as otherwise limited in this Business Associate Agreement, Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. Section 164.502(j)(1).

6. Business Associate will limit the use, disclosure, or request of Protected Health Information, to the extent practicable, (i) to the Limited Data Set, or (ii) if needed by Business Associate, to the minimum necessary (as determined by Business Associate) to accomplish the intended purpose of such use, disclosure, or request, except to the extent a broader use, disclosure, or request of Protected Health Information is allowed by the Privacy Rule. Business Associate's ability to satisfy the requirement of this Paragraph III.B.6 by use of the Limited Data Set shall be available until the effective date of subsequent guidance issued by the Secretary regarding what constitutes "minimum necessary," at which time Business Associate will take reasonable efforts to limit the use, disclosure, or request of Protected Health Information to the minimum necessary (as defined by such Secretary's guidance) to accomplish the intended purpose of such use, disclosure, or request, except to the extent a broader use, disclosure, or request of Protected Health Information is allowed by the Privacy Rule.

7. Except as otherwise authorized by the Privacy Rule, Business Associate shall not directly or indirectly receive remuneration (whether financial or nonfinancial) in exchange for any Protected Health Information of a Covered Individual unless Covered Entity has received a valid authorization from the Covered Individual that includes a specification of whether the Protected Health Information can be further exchanged for remuneration by the entity receiving Protected Health Information of that Covered Individual. This Paragraph III.B.7 shall apply to exchanges of Protected Health Information occurring on or after the compliance date applicable under the final regulations issued under HITECH that address this restriction.

8. Except as otherwise allowed by the Privacy Rule, Business Associate may not use or disclose Protected Health Information regarding a Covered Individual with respect to a communication about a product or service that encourages recipients of the communication to purchase or use the product or service unless Covered Entity receives no direct or indirect payment in exchange for making such communication and the communication is made to the Covered Individual: (i) to describe a health-related product or service (or payment for such product or service) that is provided by, or included in,

the Plan, including communications about the entities participating in a health care provider network or health plan network, replacement of, or enhancements to, the Plan, and health-related products or services available only to Covered Individuals that add value to, but are not part of, the Plan; (ii) for treatment of the Covered Individual; or (iii) for case management or care coordination for the Covered Individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the Covered Individual. Notwithstanding the foregoing, Business Associate may use or disclose Protected Health Information regarding a Covered Individual with respect to a communication about a product or service that encourages recipients of the communication to purchase or use the product or service if the communication relates to a prescription drug that is currently being prescribed for a Covered Individual and any financial remuneration received by Covered Entity in exchange for making the communication is reasonably related to Covered Entity's cost of making the communication. This Paragraph III.B.8 shall apply to disclosures of Protected Health Information occurring on or after the compliance date applicable under the final regulations issued under HITECH that address this restriction.

- C. **Limitations on Business Associate's Uses and Disclosures.** With respect to Protected Health Information that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity, Business Associate will not use or further disclose the Protected Health Information other than as permitted or required by this Business Associate Agreement (including, but not limited to, any restrictions described in Section III.E.4) or as Required by Law.
- D. **Additional Obligations of Business Associate.** Except as otherwise specified in this Business Associate Agreement, the provisions of this Paragraph III.D. apply only to Protected Health Information that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity.
1. **Safeguards.** Business Associate will use appropriate safeguards to prevent the improper use of, disclosure of, and tampering with Protected Health Information and to reasonably and appropriately protect the confidentiality, integrity, and availability of the Protected Health Information.
 2. **Reporting and Mitigation.** Business Associate will report to Covered Entity any acquisition, access, use, or disclosure of Protected Health Information of which Business Associate becomes aware, or that is reported to Business Associate by an agent or Subcontractor, that is in violation of this Business Associate Agreement. Such report shall be made within ten (10) business days of its discovery (as that term is defined in 45 C.F.R. Section 164.410(a)(2)) by Business Associate. Business Associate agrees to

promptly mitigate, to the extent practicable, any harmful effect that is known to Business Associate of an acquisition, access, use, or disclosure in violation of this Business Associate Agreement. This obligation includes, but is not limited to, any acquisition, access, use, or disclosure of Unsecured Protected Health Information that may constitute a Breach. The determination of whether a Breach has occurred, and of the resultant action, shall be the responsibility of Covered Entity.

3. Agents and Subcontractors. Business Associate will enter into a written contract with any agent or Subcontractor who creates, receives, maintains, or transmits Protected Health Information on behalf of Business Associate that requires such agent or Subcontractor to comply with the same restrictions and conditions that apply by and through this Business Associate Agreement to Business Associate with respect to such information.

4. Access to Protected Health Information. Within fifteen (15) days of a request by Covered Entity for access to Protected Health Information about a Covered Individual, Business Associate shall make available to Covered Entity or, as directed by Covered Entity, a Covered Individual such Protected Health Information contained in a Designated Record Set. If the Protected Health Information requested by Covered Entity is maintained in a Designated Record Set electronically, Business Associate shall make available, within the time period specified above, a copy of such information in the electronic form and format specified by Covered Entity, provided such information is readily producible in such form and format. If the information is not readily producible in such form and format, Business Associate shall make the information available in a readable electronic form and format as agreed to by the parties including providing a key at no cost if the information is encrypted. In the event any Covered Individual requests access to Protected Health Information directly from Business Associate, Business Associate shall within five (5) days forward such request to Covered Entity. Notwithstanding anything herein to the contrary, Covered Entity shall be ultimately responsible for providing access to the requested Protected Health Information or making the determination to deny access to requested Protected Health Information.

5. Amendment of Protected Health Information. Within fifteen (15) days of receipt of a request from Covered Entity or a Covered Individual for the amendment of Protected Health Information or a record regarding a Covered Individual contained in a Designated Record Set, Business Associate shall (i) provide such information to Covered Entity for amendment, and (ii) incorporate any such amendments in the Protected Health Information as required by 45 C.F.R. Section 164.526. It shall be Covered Entity's responsibility to promptly notify Business Associate of the request for an amendment. Notwithstanding anything herein to the contrary, Covered

Entity shall be ultimately responsible for determining whether the requested amendment shall be made and, if the request is denied, in whole or in part, complying with 45 C.F.R. Section 164.526.

6. Disclosure Accounting. Business Associate agrees to track such disclosures of Protected Health Information and information related to such disclosures as is necessary to enable Covered Entity to respond to a request by a Covered Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. Section 164.528. Within fifteen (15) days of receipt of notice from Covered Entity that it has received a request for an accounting of disclosures of Protected Health Information regarding a Covered Individual, Business Associate shall make available to Covered Entity such information as is in Business Associate's possession and is required for Covered Entity to make the accounting required by 45 C.F.R. Section 164.528. At a minimum, Business Associate shall provide Covered Entity with the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the Protected Health Information, and if known, the address of such entity or person; (iii) a brief description of the Protected Health Information disclosed; and, (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. Business Associate hereby agrees to implement an appropriate record-keeping process to enable it to comply with the requirements of this section and applicable law. It shall be Covered Entity's responsibility to promptly notify Business Associate of the request for an accounting, and to prepare and deliver any such accounting requested. In addition to the forgoing, Business Associate shall track other disclosures and/or make available to Covered Entity such information as is necessary for Covered Entity to comply with any additional accounting requirements effective as of the compliance date applicable under final regulations implementing such requirements. Notwithstanding anything herein to the contrary, Covered Entity shall be ultimately responsible for providing the disclosure accounting to the Covered Individual.

7. Access to Business Associate's Internal Records. Business Associate shall make its 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 Covered Entity or the Secretary, for the purposes of the Secretary's determining compliance with HIPAA for the Covered Entity and/or Business Associate.

8. Electronic Transactions. In the event the Business Associate transmits or receives any Covered Electronic Transaction on behalf of Covered Entity, it shall comply with all applicable provisions of the Standards for Electronic Transactions Rule to the extent Required by Law, and shall

ensure that any agents and Subcontractors that assist Business Associate in conducting Covered Electronic Transactions on behalf of Covered Entity agree in writing to comply with the Standards for Electronic Transactions Rule to the extent Required by Law.

E. Obligations and Rights of Covered Entity.

1. **Notice of Privacy Practices.** Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. Section 164.520, as well as any changes to such notice.

2. **Requests by Covered Entity.** Covered Entity shall not request or direct Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. This includes, but is not limited to, requests or directions for disclosure of Protected Health Information to the Plan sponsor in a capacity other than acting on behalf of the Plan as Covered Entity. To the extent a dispute or difference of opinion exists between the Business Associate and Covered Entity regarding whether a use or disclosure is permissible, Business Associate may disclose the Protected Health Information under objection pursuant to the specific, written direction of Covered Entity. Any disclosures made pursuant to such specific, written direction shall be subject to the indemnification provisions of this Business Associate Agreement.

3. **Changes in Permission.** Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

4. **Restrictions.** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information to which Covered Entity has agreed in accordance with 45 C.F.R. Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information. Such restrictions include, but are not limited to, a Covered Individual's request not to disclose Protected Health Information for purposes of payment or health care operations where the Protected Health Information relates solely to a health item or service for which the health care provider has been paid in full out-of-pocket by, or on behalf of, the Covered Individual.

5. **Agreement Breaches by Business Associate.** If Covered Entity obtains knowledge of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate's

obligations under this Business Associate Agreement, Covered Entity will take reasonable steps to cure such breach or end such violation. If Covered Entity cannot successfully cure the breach or end the violation, Covered Entity shall terminate the Business Associate Agreement in accordance with Section VI.B if feasible.

IV. Electronic Security Provisions

- A. **Introduction.** This section applies where Business Associate, on behalf of Covered Entity, performs or assists in the performance of functions and activities that may involve the creation, maintenance, receipt, or transmission of Electronic Protected Health Information. This Section IV along with the other sections of the Business Associate Agreement are (1) intended to meet the requirements of the "business associate" provisions of Security Rule, and (2) govern the terms and conditions under which the Business Associate may create, maintain, receive, and transmit Electronic Protected Health Information on behalf of Covered Entity. In general, Business Associate agrees and intends to act such that (1) Covered Entity can fulfill its responsibilities under HIPAA; (2) Business Associate can fulfill its responsibilities under HIPAA; and (3) Business Associate can fulfill its contractual obligations under this Business Associate Agreement.
- B. **Obligations of Business Associate.** In accordance with the Security Rule, Business Associate agrees to:
1. Conduct a security risk assessment (in accordance with 45 C.F.R. Section 164.308(a)(1)(ii)(A)) and adopt and implement policies and procedures designed to ensure compliance with the Security Rule and this Business Associate Agreement Including identifying a security officer and training personnel. This Paragraph IV.B.1 shall be effective as of the compliance date applicable under the final regulations issued under HITECH that address this requirement.
 2. Implement administrative, physical and technical safeguards (Including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that Business Associate creates, maintains, receives, or transmits on behalf of Covered Entity;
 3. Report to Covered Entity any Security Incident of which Business Associate becomes aware within ten (10) business days of its discovery by the Business Associate;
 4. Promptly mitigate, to the extent practicable, any harmful effect of a Security Incident that is known to Business Associate; and

5. Enter into a written contract with any agent or Subcontractor to whom Business Associate provides Electronic Protected Health Information that requires such agent or Subcontractor to comply with the same restrictions and conditions that apply under this Section IV to Business Associate Including implementing reasonable and appropriate safeguards to protect such information.
- C. **Obligations of Covered Entity.** Covered Entity shall not request or direct Business Associate to create, maintain, receive, or transmit Electronic Protected Health Information in any manner that would not be permissible under the Security Rule.

V. Breach Notification Requirements

If Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses Unsecured Protected Health Information, Business Associate shall notify Covered Entity of a Breach of such Unsecured Protected Health Information without unreasonable delay, but no later than sixty (60) days following discovery of the Breach. Such notice shall include an identification of each Covered Individual whose Unsecured Protected Health Information has been or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach and any other available information needed by Covered Entity to enable it to comply with its notification obligations under the Privacy Rule and Security Rule. For purposes of this Section V, a Breach is deemed to have been discovered by Business Associate upon the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to Business Associate (Including any person, other than the individual committing the Breach, that is an employee, officer or agent of Business Associate (determined in accordance with the Federal common law of agency)).

VI. Term and Termination

- A. **Term.** The Term of this Business Associate Agreement will begin and become effective on the Effective Date and shall terminate when all of the Protected Health Information created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section VI.
- B. **Termination.** In the event that a party (the "non-breaching party") discovers and determines that the other party (the "breaching party") materially breached or violated any of its obligations under this Business Associate Agreement, the non-breaching party will notify the breaching

party of such breach in writing and may immediately terminate the Business Associate Agreement upon notice to the breaching party or may provide the breaching party with an opportunity to take reasonable steps to cure the breach or end the violation, as applicable, within a mutually agreed upon period of time. If the breaching party's attempts to cure the breach or end the violation are unsuccessful within that period, without limiting the rights of the parties under the Business Associate Agreement, the non-breaching party may immediately terminate the Business Associate Agreement upon notice to the breaching party.

C. Effect of Relationship Termination.

1. Except as provided in paragraphs (2) and/or (3) of this sub-section, upon termination of the Business Associate Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information created or received by it on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of Business Associate and/or its Subcontractors or agents. Business Associate will not retain any copies of Protected Health Information.
2. In the event that Business Associate determines that returning or destroying Protected Health Information is infeasible, Business Associate will notify Covered Entity of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return, or destruction of Protected Health Information is infeasible, Business Associate will extend the protections of this Business Associate Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.
3. Should Covered Entity notify Business Associate that the information necessary to comply with the recordkeeping requirements under other applicable law includes the Protected Health Information, Business Associate shall return or provide to Covered Entity such information, including Protected Health Information.

VII. General Provisions

- A. Reproductive Health Care Information.** Notwithstanding any provision in the Agreement, as of December 22, 2024, this Agreement shall require compliance with the Regulations to Support Reproductive Health Care

Privacy that appear at 45 C.F.R. Parts 160 and 164. The definition of "health care" is amended to include "reproductive health care" defined as care that affects the health of the individual in matters related to the reproductive system. Use and disclosure of reproductive health care information is limited, including with respect to purposes of law enforcement. In many instances reproductive health care information must be disclosed only with an attestation by the recipient.

- B. **Regulatory References.** A reference in this Business Associate Agreement to a section in the Privacy Rule or the Security Rule means the section as in effect or as amended.
- C. **Amendment.** The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for Covered Entity and/or Business Associate to comply with the requirements of the Privacy Rule, the Security Rule, and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- D. **Interpretation.** Any ambiguity in this Business Associate Agreement shall be resolved to permit each party to comply with the Privacy Rule and the Security Rule, if applicable.
- E. **Survival.** The respective rights and obligations under this Business Associate Agreement shall survive the termination of this Business Associate Agreement and any related agreement, including a services agreement.
- F. **Indemnity.** Each party will indemnify, hold harmless, and defend the other party and its affiliates, officers, directors, employees or agents from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted or violating use or disclosure of Protected Health Information or other breach of this Business Associate Agreement by such party or any Subcontractor, agent, person or entity under such party's control.
- G. **No Third-Party Beneficiaries.** Nothing express or implied in this Business Associate Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties hereto, any rights obligations, or liabilities whatsoever.
- H. **Conformance with Law.** The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for the parties to comply with the requirements of HIPAA as they apply to each party.

- I. **Action.** For purposes of this Business Associate Agreement, whenever action is required by a party to this Business Associate Agreement, such action must be taken by a person or persons with authority to act on behalf of such party to this Business Associate Agreement.
- J. **Governing Law.** This Business Associate Agreement shall be governed by the law of Minnesota, except to the extent preempted by federal law.
- K. **Severability.** The invalidity or unenforceability of any provision of this Business Associate Agreement shall not affect the validity or enforceability of any other provision of this Business Associate Agreement, which shall remain in full force and effect.
- L. **Notices.** All notices and communications required by this Business Associate Agreement shall be in writing. Such notices and communications shall be given in one of the following forms: (i) by delivery in person, (ii) by a nationally recognized, next-day courier service, (iii) by first-class, registered or certified mail, postage prepaid; or (iv) by electronic mail to the address that each party specifies in writing.
- M. **Entire Agreement.** This Business Associate 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 oral, with regard to this same subject matter. Notwithstanding the foregoing, this Business Associate Agreement is intended to supplement (rather than supersede) the agreement between Business Associate and the sponsor of the Plan related to the services that Business Associate provides with respect to administration of the Plan.
- N. **Counterparts.** This Agreement may be executed in counterparts, each of which so executed shall be construed to be an original, but all of which together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Transmission by facsimile or electronic mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart. This Agreement and any amendment or modification may not be denied legal effect or enforceability solely because it is in electronic form, or because an electronic signature or electronic record was used in its formation.