AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Services Agreement; Sky Insurance Technologies, LL

Action Requested: County Manager Signature

Parties to the Agreement: Gunnison County, Colorado & Sky Insurance Technologies, LLC

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Vendor for ACA Employee Reporting 2019 (1094-1095 C IRS forms) replacing Max Services

Fiscal Impact:

Submitted by: Cheryl Seling **Submitter's Email Address:** cseling@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
Slightly higher cost for 2019 reporting than projected, however, 2020 costs can be covered in the 2020 adopted budget per current expectations. No concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 1/27/2020

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 1/30/20

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 1/30/2020 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\emense Discharge Date: 1/31/2020

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 2/4/2020

Revised April 2015

SERVICES AGREEMENT

This Services Agreement ("Agreement") by and between **SKY INSURANCE TECHNOLOGIES, LLC**, a South Carolina limited liability company located at 18 Interchange Blvd, Suite A, Greenville, SC 29607, and Gunnison County, Colorado , ("Client")

a Colorado municipality located at 200 E. Virginia Ave., Gunnison, CO 81230 is

effective as of the date of Client's electronic signature ("Effective Date").

BACKGROUND

Sky Insurance Technologies, LLC and/or its subcontractors (collectively, "ACA Reporting Service") provide a service to prepare and file Internal Revenue Service reports to document employee and dependent enrollment in employer sponsored health plans as required under Sections 6055 and 6056 of the Internal Revenue Code (the "Code"), enacted by the Patient Protection and Affordable Care Act, or other similar reporting required by law to administer health insurance subsidies or tax credits.

NOW, THEREFORE, in consideration of the mutual agreements set out below, the parties agree as follows:

1. Services. Subject to the obligations of Client under this Agreement, ACA Reporting Service shall provide to Client those services described on Addendum 1 (the "Services") attached hereto and incorporated herein by reference.

2. Term. Unless sooner terminated as provided in this Agreement, this Agreement shall continue for an initial term of one (1) year, beginning on the Effective Date.

   Except to the extent (if any) otherwise provided in this Agreement, Client may extend the term of this Agreement (subject to the "Termination" sections below), on the same terms and conditions as in effect just before the then-current end of the term, for up to one period of one (1) year by providing written notice to Sky Insurance Technologies LLC no later than sixty (60) days before the then-current end of the term. Payment for the period of the extension shall be considered sufficient written notice and extend the term of this Agreement. The cost of services and payment for the period of the extension is based upon the products and services selected by Client as well as the rates as in effect for the Services on the date of the extension of this Agreement.

   Client may not extend the term of this Agreement if at the time of its notice of extension it is in material breach of this Agreement.

3. Performance of Services. ACA Reporting Service will arrange to provide the Services to Client as specified in this Agreement.

   3.1 ACA Reporting Service warrants to Client, and to no other party (including individuals who receive an IRS form created from the Services), that ACA Reporting Service will use commercially reasonable care in providing the Services under this Agreement. As ACA Reporting Service's sole liability and Client's sole and exclusive remedy under this Agreement

for erroneous information reporting, ACA Reporting Service will reprocess the applicable form at no additional charge to Client.

3.2 Client understands and acknowledges that ACA Reporting Service shall provide the Services based on information provided to ACA Reporting Service by Client. Client is exclusively responsible for providing ACA Reporting Service with accurate and timely information required by ACA Reporting Service as described in Addendum 2. Client further understands that ACA Reporting Service will be entitled to rely fully on the accuracy and completeness of the information submitted by Client to ACA Reporting Service, and that ACA Reporting Service shall have no duty or responsibility to verify such information. ACA Reporting Service shall not be liable for any Damages (as defined in Section 8 of this Agreement) resulting from Client's failure to provide accurate and timely information required for ACA Reporting Service to provide the Services. Client is solely responsible for the accuracy and review of any IRS forms created or resulting from the use of the data provided by Client.

3.3 Notwithstanding any other provision of this Agreement, Client understands and acknowledges (i) that Client shall retain all liability and responsibility under applicable federal and state law, including without limitation, liability under Code Sections 4980H, 6055 and 6056, and (ii) that ACA Reporting Service does not, by virtue of this Agreement, assume any responsibility or liability for any obligations which by law must remain with Client in its capacity as an "applicable large employer" or "plan sponsor" (as those terms are defined under Code Section 4980H), including without limitation Client's liability under Code Sections 4980H, 6055 and 6056.

3.4 ACA Reporting Service acknowledges and understands that it may have access to protected health information of individuals participating in Client's group health plan(s) during the course of this Agreement, as the term "protected health information" is defined under the Health Insurance Portability and Accountability Act and amendments thereto and regulations promulgated thereunder ("HIPAA"). ACA Reporting Service will not use or disclose such PHI other than as required to perform the Services set forth under this Agreement or as permitted under the Business Associate Agreement, which shall be executed by both parties in the form attached hereto as Addendum 3 and incorporated by reference herein.

4. Payment. For provision of the Services, ACA Reporting Service shall be compensated by Client based upon the products and services selected by Client as well as the rates as in effect for the Services on the date of execution of this Agreement. The parties agree that amounts paid or payable by Client to ACA Reporting Service for the Services represent fair market value for the Services and do not include additional services that may be added at a later date, including, but not limited to, print and mail services, correction fees, additional consulting, or variable hour tracking. The parties agree that amounts payable by Client to ACA Reporting Service for Services are due in full upon execution of this Agreement.

5. Termination.

5.1 Either party may terminate this Agreement at any time, without cause, by providing not less than thirty (30) days' prior written notice stating the intended date of termination. If Client terminates the Agreement without cause, Client will not be entitled to any refund of any fees or payments made.

5.2 Either party may terminate this Agreement in the event the other party defaults in performance of any of its duties and obligations and the default is not cured within thirty (30) days after written notice is given to the defaulting party which specifies in reasonable detail the default in performance.

6. Additional Obligations of Client. As a condition precedent to the provision of the Services, Client shall perform those additional obligations listed in Addendum 2.

7. Indemnification.

7.1 Client shall indemnify, hold harmless and defend ACA Reporting Service, its officers, directors, shareholders and employees, from and against any and all liability, loss, damage, claim, causes of action, and expenses (including reasonable attorneys' fees)("Damages") whether or not covered by insurance, caused, or arising out of, directly or indirectly, or as a result of the performance by Client (and/or its agents, employees, officer and directors) under this Agreement or any information provided to ACA Reporting Service by Client or any agent, employee or contractor of Client.

7.2 Subject to the limitations set forth in Sections 3 and 8.1, ACA Reporting Service shall indemnify, hold harmless and defend Client, its officers, shareholders, directors and employees, from and against any and all Damages, whether or not covered by insurance, caused, directly or indirectly, by or as a result of the performance of any negligence or intentional acts by ACA Reporting Service and/or its shareholders, agents, employees and/or subcontractors (other than Client) in the performance of its obligations under this Agreement.

8. Limitation of Liability.

8.1 Notwithstanding anything in this Agreement to the contrary and specifically separate Business Associate Agreement provisions for indemnification and hold harmless related to HIPAA in Addendum 3, Section 8 (k), Client agrees that in no event will it seek to hold ACA Reporting Service liable for (i) any claims, for incidental, lost profits, consequential, or any similar damages or lost profits related to the Services provided by ACA Reporting Service under this Agreement or (ii) any claim, loss, damages, whether directly in contract, tort or otherwise, or through a claim for indemnity or contribution, in excess of the aggregate amount of annual fees paid by Client to ACA Reporting Service for this engagement in the year the precipitating event first occurred, even if ACA Reporting Service has been advised of the possibility of such claims, losses, or damages. Further, it is agreed by Client that the definition of fees paid to ACA Reporting Service will not include fees associated with postage and mailing of prepared IRS reporting forms, correction fees, additional consulting, or variable hour tracking.

9. General.

9.1 Notices. Any notice required or desired to be given in respect to this Agreement shall be deemed to be given upon the earlier of (i) actual delivery to the intended recipient or its agent delivered by hand or by a nationally recognized overnight courier service, or (ii) upon the third business day following deposit in the United States mail, postage prepaid, certified or registered mail, return receipt requested. Any such notice shall be delivered to the respective addresses set out

below, or to such other address as a party shall specify in the manner required by this Section 9.1. The respective addresses are:

If to ACA Reporting Service:	If to Client:
18 Interchange Blvd.; Suite A Attention: Amanda Brock Greenville, SC 29607	Gunnison County, Colorado 200 E. Virginia Ave. Gunnison, CO 81230 Attention: Cheryl Seling

9.2 Alternate Dispute Resolution. The parties firmly desire to resolve all disputes arising hereunder without resort to litigation in order to protect their respective business reputations and the confidential nature of certain aspects of their relationship. Accordingly, the parties agree to first mediate, before filing a lawsuit, any controversy or claim arising out of or pertaining to this Agreement. The mediator shall be mutually agreed to by the parties and shall not have previously represented ACA Reporting Service, Client or any affiliate of either party in any capacity. No disclosure of the mediation process or the result thereof shall be made by the parties except as required by the law or as necessary or appropriate to enforce the terms of any binding agreement executed by the parties at the conclusion of such mediation.

9.3 No Third Party Beneficiaries. This Agreement is entered into for the sole benefit of ACA Reporting Service and Client. Nothing contained herein or in the parties course of the dealings shall be construed as conferring any third party beneficiary status on any person or entity not a party to this Agreement, including without limitation, any employee of Client.

9.4 Independent Contractors. The parties are independent contractors and neither party is an employee, agent, servant, representative, partner, or joint venturer of the other. Neither party has the right or ability to bind the other to any agreement with a third party, or to incur any obligation or liability on behalf of the other party, without the other party's written consent. ACA Reporting Service shall be solely responsible for all compensation, benefits, and taxes associated with its employees and their performance under this Agreement.

9.5 Amendments; Waivers. No waiver of any term or condition is valid unless in writing and signed by authorized representatives of both parties, and will be limited to the specific situation for which it is given. No amendment or modification to this Agreement shall be valid unless set forth in writing and signed by authorized representatives of both parties.

9.6 Governing Law. This agreement will be governed by and construed in accordance with the laws of the State of South Carolina.

9.7 Severance. Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is found to violate a law, it will be severed from the rest of the Agreement and ignored and a new provision deemed added to this Agreement to accomplish to the extent possible, the intent of the

parties as evidenced by the provision so severed. The headings used in this Agreement have no legal effect.

9.8 Entire Agreement. This Agreement, and its attached Addenda, Exhibits, Attachments, and Schedules, as so designated, set forth the entire agreement and understanding of the parties relating to the subject matter contained herein, and merges all prior discussions and agreements, both oral and written, between the parties. Each party agrees that use of pre-printed forms, including, but not limited to email, purchase orders, acknowledgements or invoices, is for convenience only and all pre-printed terms and conditions stated thereon, except as specifically set forth in this Agreement, are void and of no effect.

9.9 Compliance with Laws. The parties expressly agree to abide by any and all applicable federal and/or state statutes, rules and regulations applicable to the parties in connection with this Agreement. In particular, without limitation, Client shall comply with all federal and state laws and regulations governing Client's relationship with its employees and other participants in Client's health insurance plans.

9.10 Non-Solicitation. Each party agrees not to solicit the employment of or hire any employee of the other until the expiration of a period of twenty-four (24) months after such employee of the other party shall have been last employed or retained by the other party.

9.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. Such executions may be transmitted to the parties by electronic transmission and such digital execution shall have the full force and effect of an original signature.

9.12 Confidentiality. During the term of this Agreement and at all times thereafter, each party agrees that it shall not cause or permit (i) any employee, officer, director, manager, owner, other affiliates or agent of such party to, (ii) any officer, director, manager, shareholder, owner, employee or other affiliate or agent of any entity in which such Party owns an interest to, or (iii) any professional advisors of such Party to (such persons in (i), (ii) and (iii) collectively, referred to as the "Representatives" of a party) except for the express and limited purposes set forth in this Agreement, use, disclose, publish, or otherwise disseminate, the terms of this Agreement or any of the confidential information of the other party to any third parties.

9.13 Proprietary Rights. This Agreement, discovery session, proprietary software, discovery workbooks and all other materials used by ACA Reporting Service in the performance of Services or provided to Client in connection with the Services (collectively, the "Materials") are confidential and proprietary to ACA Reporting Service and ACA Reporting Service reserves all right, title, and interest in and to the Materials. All information set forth in the Materials is confidential and proprietary to ACA Reporting Service and may not be disclosed in any manner by Client or its officers, directors, employees, agents, or contractors to any person or entity. Any disclosure, use, reproduction, or transmission of the Materials is expressly prohibited without the prior written consent of ACA Reporting Service which may be withheld in ACA Reporting Service' sole discretion.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first written herein. The electronic signature of Client will create a digital record which shall serve as the date signed by both parties.

SKY INSURANCE TECHNOLOGIES, LLC:

By : _____

Its (*Title*): _____

Signature: _____

AUTHORIZED SIGNOR OF CLIENT:

By: Matthew Birnie

Its (*Title*): County Manager

Signature: _____

Date: _____

ADDENDUM 1: GENERAL DESCRIPTION OF SERVICES

ACA Reporting Service will provide the Services listed in this Addendum 1. As a condition to ACA Reporting Service performing the Services, Client shall perform the obligations listed in Addendum 2.

1. Client will have access through an online electronic interface to ACA Reporting Service's proprietary software and discovery session designed to collect the necessary information to complete required IRS reporting under Sections 6055 and 6056 of the Internal Revenue Code.

2. Client will have access to customer support via phone and email support according to the service package purchased and as described at the time of purchase, as well as in Section 9 of this Addendum 1.

3. ACA Reporting Service will enter into a Business Associate Agreement with Client.

4. ACA Reporting Service will accept the final employer information, plan information, enrollment and payroll data submitted by Client in accordance with Addendum 2, and will create the necessary forms 1094 and 1095 for filing.

5. ACA Reporting Service will provide a .pdf version copy to Client of all forms 1094 and 1095 created on the later of (i) ten (10) days after the submission by the Client to ACA Reporting Service of final payroll and enrollment information for the reporting calendar year, or (ii) five (5) days prior to the IRS deadline for providing forms to employees and other required recipients (e.g., COBRA beneficiaries and retirees).

6. ACA Reporting Service will transmit the generated forms to the IRS on behalf of Client by the later of (i) ten (10) days after final approval by the Client, or (ii) the final deadline the forms need to be electronically filed with the IRS.

    a. Once ACA Reporting Service has transmitted the forms to the IRS, they will notify the client of the status of that transmission within a reasonable amount of time. If there are any discrepancies that are within the control of ACA Reporting Service, they will make any necessary corrections and refile with the IRS.
    b. Any discrepancies or reported errors that are outside of the control of ACA Reporting Service will be communicated to Client, as well as what information is necessary to correct them, and the fees associated with transmitting corrections.
    c. As much as it is able to, ACA Reporting Service will work directly with the IRS on behalf of Client to ensure that a successful transmission occurs.

7. ACA Reporting Service will assist Client with IRS inquiries and audits if this service was purchased. If Client elected this service, if there is ever an IRS audit or inquiry regarding the forms created pursuant to this Agreement, ACA Reporting Service will assign an account manager upon being notified of such audit or inquiry by Client. The account manager will provide direct assistance to Client in meeting the data requests of the IRS.

8. ACA Reporting Service will maintain electronic copies of (i) enrollment and payroll files received from Client, (ii) Client's completed discovery sessions and collected necessary ACA reporting

information, and (iii) 1094 and 1095 forms created for Client under this Agreement for a period of eight (8) years after such forms are filed with the IRS or such earlier date as they are to be returned to Client upon termination of this Agreement.

9. Description of Additional Services for 'Enhanced' and/or 'True Full Service' Purchases

9.1 If Client purchases an 'Enhanced' or 'True Full Service' package, they will have additional support from an assigned account manager.

9.2 Within three (3) business days of confirmation of payment for the 'Enhanced' or 'True Full Service' the assigned account manager will make every reasonable effort to schedule the initial 'Discovery Interview Session' at a time that is convenient for Client. ACA Reporting Service shall not be responsible for any failure by Client to respond to requests and/or correspondence by the account manager.

9.3 'Form Quality Control Checks' shall be performed on a random sampling of a reasonable number of forms (approximately 10%). Should any discrepancies be identified during the quality control process more forms may be checked, as determined by ACA Reporting Service. This service is offered as a convenience to ensure that information was input correctly into the proprietary software and discovery workbook, and is not meant to replace or relieve Client's responsibility for the accuracy of any information reported to the IRS.

9.4 ACA Reporting Service will accept and review test data submitted by Client in accordance with Addendum 2 to ensure that ACA Reporting Service will have access to the necessary information to complete the required IRS forms. This information may or may not be used to produced sample forms, and it is at the sole discretion of ACA Reporting Service to determine if the data provided is sufficient to complete the reporting in accordance with the Code.

9.5 Additional consulting can be provided to Client by their account manager and may be in the form of a report generated with final forms.

9.6 If Client purchases a 'True Full Service' package, they will have access to additional services for assistance with processing reasonable un-formatted payroll and enrollment data. The data provided must contain all of the information required to complete the IRS forms, including, but not limited to employee status, hire dates termination dates, and corresponding medical enrollment dates. This assistance does not include tracking, measuring, or using hours worked to determine employment status month-by-month, which is an additional service that must be purchased separately.

9.7 ACA Reporting Service will provide Client with a specific number of data team hours which will be used to process the Clients raw, unformatted payroll and enrollment data. If ACA Reporting Service determines that the number of hours for Client will not be sufficient, they will notify the client and determine a course of action, which may include payment of an hourly rate of $125 for the remaining work. ACA Reporting Service will not bill the client for this time until the client has signed an additional agreement to pay.

9.8 The number of hours will be based upon the size of Client package purchased or the aggregate number of forms, in the case of reporting for multiple EINs, as follows:

UP TO 100 FORMS	8 Hours	7,000 – 7,999 FORMS	27 Hours
101 – 499 FORMS	11 Hours	8,000 – 8,999 FORMS	28 Hours
500 – 999 FORMS	12 Hours	9,000 – 9,999 FORMS	29 Hours
1,000 – 1,499 FORMS	13 Hours	10,000 – 10,999 FORMS	31 Hours
1,500 – 1,999 FORMS	15 Hours	11,000 – 11,999 FORMS	33 Hours
2,000 – 2,499 FORMS	16 Hours	12,000 – 12,999 FORMS	35 Hours
2,500 – 2,999 FORMS	17 Hours	13,000 – 13,999 FORMS	37 Hours
3,000 – 3,499 FORMS	19 Hours	14,000 – 14,999 FORMS	39 Hours
3,500 – 3,999 FORMS	20 Hours	15,000 – 15,999 FORMS	40 Hours
4,000 – 4,499 FORMS	21 Hours	16,000 – 16,999 FORMS	43 Hours
4,500 – 4,999 FORMS	23 Hours	17,000 – 17,999 FORMS	44 Hours
5,000 – 5,999 FORMS	24 Hours	18,000 – 18,999 FORMS	47 Hours
6,000 – 6,999 FORMS	25 Hours	19,000 – 20,000 FORMS	48 Hours

ADDENDUM 2: ADDITIONAL OBLIGATIONS OF CLIENT

As a condition precedent to ACA Reporting Service providing the Services under this Agreement, Client will be responsible for performing the additional obligations set forth in this Addendum 2:

1. Client will access ACA Reporting Service's proprietary online discovery session and complete the data collection template according to instructions provided on the website. Client will maintain responsibility for entering all discovery session data into the appropriately labeled cells and columns, unless Client has purchased a 'True Full Service' package.

2. Client will enter into a Business Associate Agreement acceptable to client with ACA Reporting Service in the form attached to this Agreement.

3. Client will submit final payroll and enrollment data to ACA Reporting Service no later than the 10th day of the month in which the forms must be furnished to employees and filed with the IRS. This data must encompass payroll and enrollment data for the entire calendar year for which reporting is required.

4. Client understands that due to IRS instructions and stipulations of the Affordable Care Act, responsibility for the accuracy of information remains with the employer for whom reporting is being performed. Client agrees to review all information provided by ACA Reporting Service and work with its representatives to provide corrected information if necessary.

5. <u>Obligations of Client Related to Additional Services</u>

   5.1 Client must make its representatives reasonably available to their assigned account manager in order for the account manager to successfully administer the services purchased. This includes providing an additional point of contact in case ACA Reporting Service is unable to reach the primary point of contact.

   5.2 Client will submit test reporting data to ACA Reporting Service to ensure that ACA Reporting Service will have access to the necessary information to complete the required IRS forms. Client must submit the test data no later than the later of: (i) November 1st of the calendar year for which the forms are being filed, or (ii) fifteen (15) days after the execution of this Agreement.

   5.3 If Client purchases these services, Client must pay ACA Reporting Service any additional fees due for printing, packaging and mailing of IRS 1095 forms to employees and other required recipients (e.g., COBRA beneficiaries and retirees) no later than the later of: (i) December 31st of the calendar year for which the forms are being filed, or (ii) by the date Client approves the final forms.

   5.4 If Client purchases mailing services, Client must approve the mailing of employee forms within three (3) days of receiving the final forms from ACA Reporting Service, unless a request is made by Client, in writing, within the three (3) days of receiving final forms. If Client requests additional time to review forms, it is the sole responsibility of Client to ensure that approval is communicated to ACA Reporting Service with reasonable time (no less than ten days) to make changes, approve changes, and submit to the IRS.

ADDENDUM 3: BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is made and entered into this _____ day of _____, _____, by and between Sky Insurance Technologies, LLC ("Business Associate") and Gunnison County, Colorado on behalf of its group health plan(s) ("Covered Entity").

WHEREAS, Title II of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") requires that Covered Entity and Business Associate enter into an Agreement complying with certain requirements of HIPAA, as described at 45 CFR § 164.504; and

WHEREAS, Covered Entity and Business Associate desire to ensure complete compliance with HIPAA as described in this Business Associate Agreement.

NOW THEREFORE, Covered Entity and Business Associate enter into the following Business Associate Agreement.

1. DEFINITIONS

a. Specific definitions.

i. Data Aggregation. With respect to PHI created or received by Business Associate in its capacity as a Business Associate of Covered Entity, the term "Data Aggregation" means the combining of such PHI by Business Associate with PHI received by Business Associate in its capacity as business associate of another entity to permit data analyses that relate to the health care operations of the respective entities.

ii. Designated Record Set. The term "Designated Record Set" means a group of records maintained by or for the Covered Entity that is:

(1) The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or

(2) Used by or for the Covered Entity to make decisions about Individuals.

For purposes of this paragraph, the term "record" means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disclosed by or for the Covered Entity.

iii. Individual. The term "Individual" shall have the same meaning as the term "individual" in 45 CFR §160.103, and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

iv. Privacy Rule. The term "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, as from time to time amended.

v. Protected Health Information. The term "Protected Health Information" ("PHI") shall mean individually identifiable health information maintained and transmitted in any form or medium, including, without limitation, all information (including demographic, medical, and financial information), data, documentation, and materials which are created or received by a health care provider, school, health plan, employer, or health care clearinghouse, and relate to: (A) the past, present, or future physical or mental health or condition of an Individual; (B) the provision of health care to an Individual; or (C) the past, present, or future payment for the provision of health care to an Individual, and that identifies or could reasonably be used to identify an Individual. PHI does not include: (1) health information that has been de-identified in accordance with the standards for de-identification contained in the Privacy Rule, or (2) employment records.

vi. Required By Law. The term "Required By Law" shall have the same meaning as "required by law" in 45 CFR §164.103.

vii. Secretary. The term "Secretary" shall mean the Secretary of the Department of Health and Human Services ("HHS") or his or her designee.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

a. Business Associate acknowledges that in providing services to Covered Entity, it will create, receive, use or disclose PHI.

b. Business Associate agrees that it will not use or disclose PHI except as permitted or required by this Agreement, or as Required By Law.

c. Business Associate agrees that it will use appropriate safeguards to prevent use or disclosure of PHI other than as provided in this Agreement.

d. Business Associate agrees to mitigate, to the extent practicable, any harmful effects known to it which are caused by a use or disclosure of PHI by it or by one of its agents or subcontractors in violation of the requirements of this Agreement.

e. Business Associate agrees that it will report to Covered Entity any use or disclosure of PHI not allowed by this Agreement if it becomes aware of the use or disclosure.

f. Business Associate agrees that it will ensure that any agent or subcontractor to whom it provides PHI pertaining to Covered Entity agrees in writing to the same restrictions and conditions that this Agreement imposes on Business Associate.

g. Business Associate agrees to provide an appropriate Individual with access to PHI in a Designated Record Set in the manner required of Covered Entity pursuant to the requirements of 45 CFR §164.524.

h. Business Associate agrees to allow an appropriate Individual to make amendment(s) to PHI in a Designated Record Set in the manner required of Covered Entity pursuant to the requirements of 45 CFR §164.526.

i. Business Associate agrees to make its internal practices, books, and records (including PHI pertaining to Covered Entity) available to the Secretary for purposes of determining Covered Entity's compliance with the Privacy Rule.

j. Business Associate agrees to document disclosures of PHI and information related to these disclosures so it or Covered Entity may respond to requests by Individuals for an accounting of disclosures of PHI pursuant to the requirements of 45 CFR §164.528.

k. Business Associate agrees to provide PHI in the possession or control of Business Associate to appropriate Individuals in order to respond to requests for an accounting of disclosures of PHI pursuant to the requirements of 45 CFR §164.528.

l. Business Associate's responses to requests for action with respect to PHI described in this Section II shall be completed in a manner which complies with the timeliness requirements contained in the Privacy Rules.

m. Business Associate agrees to notify Covered Entity if there is a breach of unsecure PHI pursuant to the requirements of 45 CFR §§164.410.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

a. General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI pertaining to Covered Entity for the purposes set forth in the parties' service agreement, if the use or disclosure would not violate the Privacy Rule if done by Covered Entity or violate the minimum necessary policies and procedures of Covered Entity.

b. Specific Use and Disclosure Provisions:

i. Except as otherwise limited in this Agreement, Business Associate may use PHI for its own proper management and administration or to carry out its legal responsibilities, provided the disclosures are Required By Law or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be 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.

ii. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B).

iii. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1).

4. OBLIGATIONS OF THE COVERED ENTITY

a. To Inform Business Associate. Covered Entity will inform Business Associate of its privacy practices and any agreed restrictions on PHI as follows:

i. Covered Entity shall advise Business Associate of any limitations in the notice of privacy practices that Covered Entity produces in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

ii. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes affect Business Associate's use or disclosure of PHI.

iii. Covered Entity shall notify Business Associate of any restrictions on use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restrictions may affect Business Associate's use or disclosure of PHI.

b. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would violate the Privacy Rule if done by Covered Entity, except that Business Associate may in its discretion use or disclose PHI for Data Aggregation and/or management and administrative activities of Business Associate.

5. COMPLIANCE WITH HIPAA SECURITY REGULATIONS

a. Business Associate shall:

i. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI it creates, receives, maintains or transmits on behalf of Covered Entity as required to comply with HIPAA Security Regulations at 45 CFR Parts 160, 162 and 164.

ii. Ensure that any agents, including but not limited to contractors and subcontractors, to which Business Associate provides PHI pertaining to Covered Entity, agree in writing to implement reasonable and appropriate safeguards to protect it.

iii. Have a system in place to report to Covered Entity any security incident of which Business Associate becomes aware. "Security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

6. STANDARDS FOR ELECTRONIC TRANSACTIONS

a. In connection with Standard Transactions, as defined in HIPAA, Business Associate will:

i. Comply with all applicable provisions of the HIPAA Standard for Electronic Transactions Rule on or before the compliance date (the "Transactions Compliance Deadline") when exchanging information in covered electronic transactions. Business Associate will comply with any future required transactions or code set standards adopted by HHS on or before the required compliance date.

"Standards for Electronic Transactions Rule" means the final regulations issued by HHS concerning Standard Transactions and Code Sets under HIPAA Rules, 45 CFR Parts 160 and 162, as may thereafter be amended. "Transactions" means the types of information exchange between two parties to carry out financial or administrative activities related to health care as defined in the Standards for Electronic Transactions Rule.

ii. Ensure that any agents, including but not limited to contractors and subcontractors, that assist Business Associate in conducting Standard Transactions on behalf of Covered Entity, agree in writing to comply with the Standards for Electronic Transactions Rule.

iii. Not change the definition, data condition, or use of any data element or segment.

iv. Not add any data elements or segments to the maximum defined data set in a Standard Transaction.

v. Not use any code or data elements that are either marked "not used' in the standard's implementation specification or are not in the standard's implementation specification(s).

vi. Not change the meaning or intent of the standard's implementation specification(s).

7. TERM AND TERMINATION

a. Term. This Agreement shall be effective as of the date stated above and shall terminate when all PHI pertaining to Covered Entity which Business Associate maintains is destroyed or returned to Covered Entity, or, if it is not feasible to return or destroy

PHI, protections are extended to such information in accordance with the Termination provisions in this Section.

b. Termination for Cause. If Covered Entity or Business Associate learns of a material breach by the other party, it shall: (1) provide a reasonable opportunity for the party to cure the breach or end the violation, or if the party does not cure the breach or end the violation within the time specified by the non-breaching party; (2) immediately terminate this Agreement and any underlying service agreement upon written notice to the breaching party that it has breached a material term of this Agreement and there is no cure.

c. Effect of Termination:

i. Except as provided in paragraph (c)(ii) of this Section VII, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI relating to Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of this PHI.

ii. In the event that Business Associate reasonably determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon Business Associate's reasonable determination that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of PHI to those purposes that make the return or destruction not feasible, for as long as Business Associate maintains the PHI.

8. MISCELLANEOUS

a. Regulatory References. Reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

b. Amendment. The Parties agree to take such action as may be necessary to amend this Agreement from time to time for Covered Entity or Business Associate to comply with the requirements of the Privacy Rule and other requirements of HIPAA.

c. Survival. The respective rights and obligations of Business Associate under Sections VII(c)(i) and (ii) of this Agreement shall survive termination of this Agreement.

d. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity or Business Associate to comply with the Privacy Rule and other requirements of HIPAA. This Agreement shall be interpreted without regard to the rule that a document is to be construed against the party which drafts it.

e. Complete Integration. This Agreement Forms - the entire agreement between the parties relating to the subject matter hereof, and supersedes all prior negotiations, discussions, representations, or proposals, whether oral or written, unless expressly

incorporated herein. Further, this Agreement may not be modified except in a writing signed by the duly authorized representatives of both parties. If any provision or part of this Agreement is found to be invalid, the remaining provisions shall remain in full force and effect.

f. Successors and Assigns. This Agreement will inure to the benefit of and be binding upon the successors and assigns of Covered Entity and Business Associate. However, this Agreement is not assignable by either party without the prior written consent of the other party, except that Business Associate may assign or transfer this Agreement to any entity owned or under common control with Business Associate. Written consent will not be unreasonably withheld.

g. Not a Fiduciary, Plan Administrator or Agent. Business Associate shall not be considered a fiduciary, plan administrator or agent of any of Covered Entity's employee benefit plans.

h. No Third Party Beneficiaries. This Agreement is entered into for the benefit of Covered Entity and Business Associate. There are no third party beneficiaries to this Agreement. Business Associate's obligations are to Covered Entity only.

i. Confidentiality. Except as otherwise provided in the Privacy Rule or this Agreement, neither party will disclose the terms of this Agreement to any third party without the other party's written consent.

j. Counterparts. This Agreement may be executed in two or more counterparts, each of which may be deemed an original.

k. Indemnification and Hold Harmless. If the Business Associate is found to be a federal common law agent of the Covered Entity, the Business Associate agrees to indemnify Covered Entity and hold it harmless from any and all liabilities or damages, including penalties, costs or attorneys' fees, resulting directly or indirectly from Business Associate's breach of the terms of this Agreement, or resulting directly or indirectly from any breach of the HIPAA Rules by one of Business Associate's employees, agents or contractors. Covered Entity agrees to indemnify Business Associate and hold it harmless from any and all liabilities or damages, including penalties, costs or attorneys' fees, resulting directly or indirectly from Covered Entity's breach of the terms of this Agreement, or resulting directly or indirectly from any breach of the HIPAA Rules by one of Covered Entity's employees, agents or contractors. In no event shall Business Associate be held liable for a violation or breach of the HIPAA Rules resulting directly or indirectly from Covered Entity's disclosure of login or access information to its account on Business Associate's system to unauthorized individuals or entities.

9. ACKNOWLEDGEMENT AND SIGNATURES

THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS. THE ELECTRONIC SIGNATURE OF COVERED ENTITY WILL CREATE A DIGITAL RECORD WHICH SHALL SERVE AS THE DATE SIGNED BY BOTH PARTIES.

BUSINESS ASSOCIATE	**COVERED ENTITY**
By: _____	By: _____
Title: _____	Title: _____
Signature: _____	Signature: _____
	Date: _____