



## GENERAL SERVICES COMMITTEE

with

**Council Members Edinger, Evans & Gookin**

**July 23, 2018, 12:00 p.m.**

### AGENDA

---

#### VISION STATEMENT

Our vision of Coeur d'Alene is of a beautiful, safe city that promotes a high quality of life and sound economy through excellence in government.

---

\*\*\*\*ITEMS BELOW ARE CONSIDERED TO BE ACTION ITEMS

1. Approval of Letter of Agreement with XCraft for Temporary Installation and Testing of First IZ Drone – Bill Deruyter
2. Approval of Agreement with Peak 1 for the Third Party Administration of the City of Coeur d'Alene's Flexible Spending Account – Melissa Tosi

Library Community Room  
702 Front Street

*The City will make reasonable accommodations for anyone attending this meeting who require special assistance for hearing, physical or other impairments. Please contact Juanita Knight, the committee liaison at (208) 769-2348 at least three days in advance of the meeting date and time.*

# City of Coeur d'Alene

## FIRE DEPARTMENT

*"City of Excellence"*

### General Services Staff Report

**Date:** July 5, 2018  
**From:** Deputy Chief Bill Deruyter  
**Re:** Emergency Drone Response (First IZ)

---

**DECISION POINT:** Should Council enter into an agreement with XCraft for preliminary testing on its concept for First IZ through the temporary installation of a "base station" at Coeur d' Alene Fire Station 4?

**HISTORY:** In December of 2017, Mayor Widmyer was contacted about an idea involving drones and first response in emergency situations. Mayor Widmyer referred this to Chief Kenny Gabriel and I have been meeting with XCraft representatives since then. We have developed a concept where this technology could benefit emergency responses in the future. XCraft is located in Coeur d'Alene and is seeking a partnership with the City in the development of this never before seen technology.

**FINANCIAL ANALYSIS:** There will be no installation costs to the City and we have the space requested by XCraft at Fire Station 4. There will be a nominal electrical cost due to providing 110 volt service at the test site. All installation and maintenance is provided by XCraft. The property will be returned to its original state upon completion of testing unless a permanent installation is to be made.

**PERFORMANCE ANALYSIS:** Coeur d'Alene Fire sees this as the future of drone technology in first response situations. Having the capability to see an incident before the crews are on scene would give our responding units a bird's eye view on what is happening or not happening. They could order or cancel units as appropriate, saving lives and resources alike.

This is an automated drone system and it would be the first of its kind anywhere. The drone would respond to predetermined emergencies designated by the Fire Department. Examples: a fire on Tubbs Hill, a boat accident on the lake, a car accident, or a structure fire. It would not respond to medical calls. We would have the ability to recall the drone at any point during responses. This would also save resources not needed at a scene. An example of this would be the report of a boat accident that is later determined to be a life jacket in the water. Currently multiple resources from multiple agencies respond to emergencies, potentially causing delays in responding to other calls. A thermal imaging camera would be used on this drone as well. This

would allow us to see the exact location and size of fires on Tubbs Hill before being on scene and hiking in. This would save time by allowing the Department to put the right resources in the right spot at the right time.

XCraft will be working on getting the permits and licensures needed through the FAA. They will also be contacting the HOA's (Home Owner Associations) in the area to advise them about what may be seeing flying in the area.

Station 4 gives XCraft access to flying over less populated areas to the west. It also has the space to allow them to test their drone "garage" concept.

If the testing is found to not work and the concept is scrapped, all installed equipment will be removed by XCraft.

**DECISION POINT/RECOMMENDATION:** Council should approve the agreement with XCraft to provide the space needed for testing and power at Coeur d'Alene Fire Station 4.



July 10, 2018

XCraft Enterprises, Inc.  
313 E. Sherman Ave.  
Coeur d'Alene, ID 83814

Attn.: J.D. Claridge, CEO, President

Dear Mr. Claridge:

This letter confirms the agreement regarding the temporary installation at Coeur d'Alene Fire Station 4 for, and preliminary testing within the City of, your concept for First IZ. It is agreed that, starting no earlier than July 18, 2018, you may install a "base station" at Fire Station 4 for the testing of an automated drone first response system. The City will provide and approve the space for the installation, and will provide the necessary electrical service. XCraft will perform all installation work and maintenance required for the system at its own cost. It is further agreed that XCraft will indemnify, defend and hold the City harmless from any and all causes of action, including attorney fees, arising from any alleged tortious act or omission by XCraft, its officers, and its employees, arising out of the installation and testing. The City shall not be liable for damage to any equipment or other property of XCraft unless damaged by the negligence of the City, its officers, or employees. At the conclusion of the testing period, XCraft will be responsible for the removal of all equipment and the restoration of City property to its condition prior to installation, at its own cost. If the parties, on the other hand, agree to a continuance of the system following the completion of testing, a new agreement shall be required.

Before commencing installation or testing, the following must be provided to the City: (1) this signed Letter of Agreement, (2) a copy of a liability insurance policy naming the City as an additional insured with minimum policy limits of \$500,000 for bodily or personal injury, death, or property damage or loss as a result of any one accident or occurrence as required by Idaho Code § 6-924, and (3) proof of worker's compensation insurance.

This agreement may be terminated by either party, without penalty or liability, by providing thirty (30) days' written notice to the other party.

XCraft, its officers, and its employees shall not be deemed employees of the City for any purpose. XCraft, its officers, and its employees shall not interfere with the City's operations and shall obey any lawful command from the Fire Chief or his designee pertaining to the installation or testing. XCraft, its officers, and its employees shall comply with all federal, state, county, and City laws, statutes, ordinances, and regulations pertaining to the operation of drones.

Sincerely \_\_\_\_\_

Title \_\_\_\_\_

**CONTRACTOR ACCEPTANCE OF TERMS**

Company Name: XCraft Enterprises Inc.

Authorized Signature: [Signature] Date: 7/10/18

Printed Name and Title: JD Claridge

Cc: City Clerk



XCRAENT-01

LSTEWART1

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

07/12/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER <b>Hub International Northwest LLC</b> PO Box 3144 Spokane, WA 99220	CONTACT NAME: <b>Stacey Gerry</b> PHONE (A/C, No, Ext): <b>(509) 863-0308</b> FAX (A/C, No): E-MAIL ADDRESS: <b>stacey.gerry@hubinternational.com</b>
INSURED  <b>xCraft Enterprises, Inc.</b> <b>418 E. Lakeside Ave.</b> <b>Coeur D Alene, ID 83814</b>	INSURER(S) AFFORDING COVERAGE INSURER A : <b>Oregon Mutual Insurance Company</b> INSURER B : <b>Idaho State Insurance Fund</b> INSURER C : INSURER D : INSURER E : INSURER F : NAIC # <b>14907</b> <b>36129</b>

## COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER: 1

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input checked="" type="checkbox"/> OTHER: <b>Hired &amp; Non-Owned Auto</b>			<b>BSP352570</b>	<b>03/11/2018</b>	<b>03/11/2019</b>	EACH OCCURRENCE \$ <b>1,000,000</b> DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>100,000</b> MED EXP (Any one person) \$ <b>5,000</b> PERSONAL & ADV INJURY \$ <b>1,000,000</b> GENERAL AGGREGATE \$ <b>2,000,000</b> PRODUCTS - COMP/OP AGG \$ <b>2,000,000</b> <b>H &amp; N-O Auto</b> \$ <b>1,000,000</b>
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <b>DED</b> <input type="checkbox"/> <b>RETENTION \$</b>						EACH OCCURRENCE \$ AGGREGATE \$ \$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N / A	<b>659810</b>	<b>09/11/2017</b>	<b>09/11/2018</b>	PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ <b>500,000</b> E.L. DISEASE - EA EMPLOYEE \$ <b>500,000</b> E.L. DISEASE - POLICY LIMIT \$ <b>500,000</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
City of Coeur D'Alene is an additional insured regarding insured operations installation at Coeur d'Alene Fire Station 4.

## CERTIFICATE HOLDER

## CANCELLATION

City of Coeur D'Alene  
City Hall 710 E Mullan  
Coeur D Alene, ID 83814

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



RUHJRQ#P XWXDO#QVXUDQFH#RPSDQ\  
EXVIQHVVZRQHUV  
EODQNHWF#GGIWRQDO#QVXUHG

P5;:3E +4047,

WKIV#HQGRUVHPHQW#KDJQHV#KHSROIF\1#SOHDVH#JHDG#W#F#DUHIXOO\1

Wklv#hggurwhp hqw# rgllhv#qvxudqfh#surylghg#kqghu#kh#r#r#z lqj=

EXVIQHVVZRQHUV#RYHUDJH#RUP

Sdujjudsk#F1Z kr#lv#Dq#qvxung lq#Vhfwrq#I# Olde l#w|  
lv#lv hqghg#r#qfoxgh#lv#lq#lqgg l#wrqd#qvxung=

41 Dq|#shwrrq-v,#ru#rujdql#dwrq-v,#z lk#z krp #|rx#kdyh#  
hqwhhg#qwr#lq#lqvxung#frqwdfw#lqg

51 Kdyl#ljuhgh#q#z ulqj#q#l#frqwdfw#ru#ljuhghp hqw#kdw#  
vxfk#shwrrq-v,#ru#rujdql#dwrq-v,#eh#lqghg#lv#lq#  
dgg l#wrqd#qvxung#q#|rxu#r#df|\*lqg

61 Z khuh#l#Fhuwllfdwn#r#lqvxudqfh#krz lqj#kdw#  
shwrrq-v,#ru#rujdql#dwrq-v,#lv#lq#lqgg l#wrqd#qvxung#  
kdv#ehhg#lvxhg#lqg

71 Z khq#kh#lqvxung#frqwdfw#lqg#kh#Fhuwllfdwn#l#h#  
hihfwyh#qxlqj#kh#whp #r#kh#r#df|lqg#h#hfxwng#  
sulr#r#kh#ergl#lqmu|/%surshw|#gdp djh#%ru#  
%shwrrqd#lqg#lgyhuwlvj#lqmu|%

Vxfk#shwrrq-v,#ru#rujdql#dwrq-v,#lv#lq#lqgg l#wrqd#  
lqvxung#q#z lk#lvshfw#r#Olde l#w|ru#ergl#lqmu|/%  
%surshw|#gdp djh#%ru#shwrrqd#lqg#lgyhuwlvj#lqmu|/%  
fdxvhg/#q#z kr#r#ru#lq#sduw/e|=

d1 \rxu#lfw#ru#p lvlrqv#ru

e1 Wkh#lfw#ru#p lvlrqv#r#krvh#lfwqj#q#|rxu#  
ehkddl

Krz hyhu#kh#lqvxudqfh#liirughg#r#vxfk#lqgg l#wrqd#  
lqvxung=

d1 Rqql#lsschv#r#kh#h#whq#shup lwhg#|#olz #lqg

e1 Z lqgrw#eh#eurdghu#kdg#kdw#z klfk#|rx#l#h#  
uhtxling#r#surylgh#|kh#lqvxung#frqwdfw#l

**General Services  
Staff Report**

**Date:** July 23, 2018  
**From:** Melissa Tosi; Human Resources Director  
**Re:** Third Party Administration for Flexible Spending Account

---

**Decision Point:** Should City Council approve an Agreement with Peak1 Administration, LLC, (Peak1), for the Third Party Administration (TPA) of the City of Coeur d'Alene's Flexible Spending Account (FSA)?

**History:** The City of Coeur d'Alene has used Magnuson, McHugh & Company, P.A., (MM&Co.), for our Flexible Spending Account TPA for over thirty years. Recently, MM&Co. has made the decision to no longer administer Employee Benefit Plans.

After reviewing multiple proposals, and receiving a favorable recommendation from MM&Co., I believe it is in the best interest of the City, and our employees, to transition to Peak1 at the beginning of our 2018-2019 fiscal year. Peak1 has a local office in Coeur d'Alene and has administered Employee Benefit plans for over 15 years. Additionally, Teresa Espe, Account Specialist with MM&Co. has transferred employment to Peak1 and will continue to oversee the FSA and work directly with our enrolled employees.

**Financial:** Currently with MM&Co., the City is paying a flat fee of \$660 per month (\$7,920 annually). Peak1 has agreed to a \$250 annual renewal service fee plus a \$3.95 per month fee for each employee participating. In the current 2017-2018 fiscal year, we have 86 employees enrolled in the FSA plan. Comparing the two TPA's using current enrollment numbers, the annual cost with Peak1 would be \$4,326 annually, an approximate savings of \$3,593 annually.

**Performance Analysis:** Transitioning to a new TPA is necessary due to MM&Co. no longer administering the FSA plan. Additionally, switching to Peak1 will lower the overall cost to administer the plan. Peak1 is a local company that prides itself in both technology and customer service, and has many years of experience administering Employee Benefit plans.

**Decision Point/Recommendation:** The Council should approve an Agreement with Peak1 Administration, LLC., for the Third Party Administration of the City of Coeur d'Alene's Flexible Spending Account.



## **ADMINISTRATIVE SERVICES AGREEMENT**

**City of Coeur d'Alene**



## TABLE OF CONTENTS

<b>ARTICLE I. INTRODUCTION .....</b>	<b>3</b>
1.1 EFFECTIVE DATE AND TERM.....	3
1.2 SCOPE OF UNDERTAKING-GENERALLY .....	3
1.3 DEFINITIONS.....	3
<b>ARTICLE II. PSP’S RESPONSIBILITIES.....</b>	<b>4</b>
2.1 RECORDKEEPING .....	4
2.2 BONDING .....	4
2.3 CARE AND DILIGENCE .....	4
2.4 NO LIABILITY FOR CLAIMS AND EXPENSES.....	4
2.5 NON-DISCRETIONARY DUTIES; ADDITIONAL DUTIES .....	4
2.6 THIRD PARTY VENDORS.....	4
2.7 CUSTOMER SERVICE AND ELECTRONIC ADMINISTRATIVE SERVICES .....	5
2.8 INDEMNIFICATION BY PSP .....	5
<b>ARTICLE III. CLIENT’S RESPONSIBILITIES.....</b>	<b>5</b>
3.1 PROVIDE INFORMATION TO PSP .....	5
3.2 COMPLIANCE REPORTING .....	5
3.3 MEDICARE SECONDARY PAYER RULES COMPLIANCE .....	5
3.4 FIDELITY BOND .....	5
3.5 PROCESSING CLAIMS REQUESTS .....	6
3.6 FMLA DETERMINATIONS .....	6
3.7 CONTINUATION LAW COMPLIANCE.....	6
3.8 QMCSO COMPLIANCE.....	6
3.9 FEES.....	6
3.10 INDEMNIFICATION BY CLIENT .....	6
3.11 DETERMINATION OF EMPLOYEE STATUS.....	6
<b>ARTICLE IV. COMPENSATION .....</b>	<b>6</b>
4.1 SERVICE CHARGES .....	6
4.2 PAYMENT OF CHARGES .....	7
<b>ARTICLE V. GENERAL PROVISIONS.....</b>	<b>7</b>
5.1 PROVISIONAL PAYMENT.....	7
5.2 LIMITATION ON DAMAGES .....	7

5.3	AUDITS .....	8
5.4	NON-DISCLOSURE OF PROPRIETARY INFORMATION .....	8
5.5	DISCLOSURE OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION .....	8
5.6	NOTICES AND COMMUNICATIONS .....	8
5.7	TERMINATION OF AGREEMENT .....	9
5.8	DISPUTE RESOLUTION PROCEDURE .....	9
5.9	SUSPENSION OF SERVICES .....	9
5.10	INTERPRETATIONS.....	9
5.11	COMPLIANCE; NON-WAIVER .....	9
5.12	ASSIGNMENT; AMENDMENT .....	10
5.13	ENTIRE AGREEMENT; SEVERABILITY; HEADINGS.....	10
5.14	GOVERNING LAW .....	10
5.15	NO THIRD PARTY BENEFICIARIES .....	10
5.16	RELATIONSHIP OF THE PARTIES .....	10
5.17	FORCE MAJEURE.....	10
5.18	SURVIVAL .....	10
5.19	COUNTERPARTS .....	10

## **APPENDIX**

VEBA SERVICES APPENDIX .....	ERROR! BOOKMARK NOT DEFINED.
BENEFIT PLAN SERVICES APPENDIX.....	12
BENEFIT PLAN COMPLIANCE SERVICES APPENDIX.....	19
RETIREE ALTERNATIVE COVERAGE IN LIEU OF COBRA BILLING APPENDIX.....	ERROR! BOOKMARK NOT DEFINED.
ENROLLMENT AND BILLING SERVICES APPENDIX .....	ERROR! BOOKMARK NOT DEFINED.
HIPAA CONFIDENTIALITY APPENDIX .....	24

## ADMINISTRATIVE SERVICES AGREEMENT

**THIS AGREEMENT**, effective as of October 1, 2018, by and between City of Coeur d'Alene, a ("Client") and PSP Administration, LLC, an Idaho limited liability company ("PSP").

### RECITALS

1. The Client desires to engage PSP to perform certain administrative and recordkeeping services described in this Agreement for Client.
2. PSP has agreed to perform for Client the administrative and recordkeeping services described in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained in this Agreement, and any attached exhibits and appendices, the Client and PSP agree as follows:

### ARTICLE I. INTRODUCTION

#### 1.1 Effective Date and Term

This Agreement is effective as of 10/1/18 ("Effective Date") and will continue until terminated by either party in accordance with Article 5.7 of this Agreement. Each Appendix attached to this Agreement is incorporated into and made a part of this Agreement. An Appendix may have a later effective date than this Agreement to the extent that Client and PSP agree to the terms set forth in the Appendix after the Effective Date of this Agreement.

#### 1.2 Scope of Undertaking-Generally

PSP will perform the administrative responsibilities described in this Agreement, including any Appendices which are attached to and part of this Agreement. Client reserves to itself authority over all discretionary matters and decisions pertaining to any employee benefit plan to which this Agreement pertains. PSP will not be the named fiduciary, plan administrator, trustee or custodian of any employee benefit plan to which this Agreement pertains. Client acknowledges that PSP is not an accounting or law firm and no services provided by PSP will constitute or be construed as tax or legal advice.

#### 1.3 Definitions

The following definitions will apply to this Agreement and its Appendices, unless a term is defined differently in an Appendix:

- (a) Code - means the Internal Revenue Code of 1986 and regulations thereunder, as amended from time to time.
- (b) COBRA - means the Consolidated Omnibus Budget Reconciliation Act of 1985 (as it appears in the Code and ERISA) and regulations thereunder, as amended from time to time.
- (c) ERISA - means the Employee Retirement Income Security Act of 1974 and regulations thereunder, as amended from time to time.
- (d) Fiduciary – means Plan Administrator, Client as the Named Fiduciary in the Plans, and any other person who satisfies the definition of "fiduciary" under ERISA.
- (e) HIPAA - means the Health Insurance Portability and Accountability Act of 1996 and regulations thereunder, as amended from time to time.
- (f) Named Fiduciary – is a term described in Section 402(a)(1) of ERISA that is applicable to the Plans subject to ERISA and means Client.
- (g) Plan Administrator – means Client.

## **ARTICLE II. PSP's RESPONSIBILITIES**

PSP will perform the responsibilities described in this Article II and any additional responsibilities delegated to PSP in the Appendices which are attached to and part of this Agreement.

### **2.1 Recordkeeping**

PSP will maintain its usual and customary books, records, and documents, including electronic records related to the administrative services it performs pursuant to this Agreement for the lesser of the term of this Agreement or eight (8) years following the date the record was created, or received by PSP. During this retention period, with reasonable prior written notice to PSP, Client has the right to access these documents at PSP's offices at a mutually agreed upon time during normal business hours. PSP will deliver copies of all books, records and documents in its possession to Client or its designee as soon as possible, but no later than thirty (30) days after receipt of a written request from the Client. Client will pay the reasonable charges of PSP for compilation, duplication and transmission of such records.

### **2.2 Bonding**

In accordance with applicable law, PSP will maintain a fidelity bond covering its employees who handle Benefit Plan contributions provided to PSP by Client in accordance with the terms of this Agreement. This bond covers the handling of such funds from dishonesty, theft, forgery or alteration, and unexplained disappearance.

### **2.3 Care and Diligence**

PSP will exercise the same standard of reasonable care and due diligence in the exercise of its powers and the performance of its duties under this Agreement as would be exercised by an entity providing services similar to those provided by PSP under this Agreement. If PSP makes any payment under this Agreement to an ineligible person, or if more than the correct amount is paid, PSP will make a diligent effort to recover any payment, unrelated to inaccurate or untimely information that it makes to, or on behalf of, an ineligible person or any overpayment in accordance with applicable guidelines. However, PSP will not be liable for such payment unless PSP would otherwise be liable under another provision of this Agreement. It will not be considered a breach of this Agreement if PSP refuses to perform services generally required under this Agreement if the manner in which Client desires such services to be performed requires material changes to PSP's standard operating procedures.

### **2.4 No Liability for Claims and Expenses**

PSP does not insure or underwrite the liability for payment of claims under the Benefit Plan and is not financially responsible for the claims and/or expenses incident to the Benefit Plans. PSP has no duty or obligation to defend or pay any costs associated with any legal action or proceeding brought pertaining to eligibility for coverage or to recover benefits under the Benefit Plans. PSP will, however, provide to Client and/or Client's legal counsel, upon request and subject to any limitations described in this Agreement or under applicable law, documentation in PSP's possession pertaining to such claim for benefits and/or expenses.

### **2.5 Non-Discretionary Duties; Additional Duties**

The services to be performed by PSP under this Agreement are ministerial in nature and will generally be performed within the frameworks and policies established by Client. PSP does not have and will not exercise discretionary control over the Benefit Plans or any assets of the Benefit Plans. PSP and Client may agree to additional duties in writing as may be specified in the applicable Services Appendices from time to time.

### **2.6 Third Party Vendors**

PSP may contract with one or more third parties for purposes of assisting PSP with the fulfillment of its duties and responsibilities under this Agreement. PSP will indemnify Client and hold its officers, directors and employees harmless from any claim, demand, or expense arising from the intentional and/or grossly negligent act or omission of such third party if PSP had actual knowledge of such negligent act or omission and failed to take steps to remedy it.

## **2.7 Customer Service and Electronic Administrative Services**

PSP will provide certain electronic administrative services. PSP will not be in default of this Agreement, nor held responsible for, any cessation, interruption, or delay in the performance of its obligations under this Agreement due to events substantially beyond its control, including, but not limited to, acts of God, acts of a public enemy or governmental body in its sovereign capacity, war, fire, floods, strikes, epidemics, quarantine restrictions, civil unrest or riots, freight embargoes, unusually severe weather, breakdown of telephone, computer or automated mailing equipment (other than a breakdown of telephone, computer or automated mailing equipment owned by or under the control of PSP) or if either party is notified by a state or federal regulatory body or by any card issuing association (e.g., VISA® or MasterCard® International) that any aspect of this Agreement does not comply with any applicable law, regulation, rule, policy, or order applicable to such party. The affected party will give the other party prompt written notice to that effect. Lack of funds by either party will not excuse timely performance. The party so affected will use commercially reasonable efforts to avoid or remove such causes of non-performance or delay, and will continue performance hereunder with reasonable dispatch whenever such causes are removed.

## **2.8 Indemnification by PSP**

PSP will indemnify Client and hold its officers, directors and employees harmless from and against all loss, liability, damages, expenses, reasonable attorneys' fees or other obligations, except punitive damages, resulting from, or arising out of the gross negligence of PSP that results in a breach by PSP of the standard of care set forth in Article 2.3 in this Agreement and then only to the extent permitted under Article 2.4 in this Agreement. However, in no event will PSP indemnify Client for Benefit Plan payments for which Client may become liable unless, and to the extent, such benefit payment would not have arisen but for PSP's breach of its standard of care as set forth in this Agreement.

## **ARTICLE III. CLIENT'S RESPONSIBILITIES**

Client will be responsible for the obligations described in this Article III, any additional obligations described in the Appendices attached to this Agreement and any obligations not specifically delegated to PSP under Article II of this Agreement.

### **3.1 Provide Information to PSP**

Client will furnish the information that PSP determines is pertinent to fulfilling its responsibilities under this Agreement in the time and in the manner agreed to by Client and PSP. Client agrees that PSP may rely on all information provided to PSP as complete and accurate and PSP will have no duty to question the completeness or accuracy of such information. Client understands that PSP cannot accurately perform its duties under this Agreement without accurate and timely information. Client will be solely responsible for any liability arising from or related to inaccurate and/or untimely information provided to PSP by or on behalf of Client (or any third party who has provided information to PSP). Client acknowledges PSP may, at its option, charge an additional fee if PSP performs additional processing as a result of inaccurate or untimely information.

### **3.2 Compliance Reporting**

Client will be responsible for preparing, distributing and filing all government reports, returns and other communications required by applicable law.

### **3.3 Medicare Secondary Payer Rules Compliance**

To the extent applicable, Client will provide to PSP, all information required to report information consistent with the Medicare Secondary Payer Rules in the manner and intervals designated by PSP.

### **3.4 Fidelity Bond**

Client will maintain a fidelity bond meeting the minimum requirements of ERISA and other applicable law.

### **3.5 Processing Claims Requests**

Client will be responsible for processing any claims for benefits received prior to the Effective Date and (including any run-off claims submitted after the Effective Date) and maintaining legally required records of, or pertaining to, Prior Reimbursement Requests and Prior Administration sufficient to comply with applicable law (e.g., IRS substantiation).

### **3.6 FMLA Determinations**

Client will make determinations regarding FMLA, including, but not limited to, whether FMLA applies. PSP will not make determinations regarding FMLA. Furthermore, PSP will be entitled to rely upon the information provided by Client and is under no obligation to independently verify such information.

### **3.7 Continuation Law Compliance**

Unless Client, Plan Administrator, and PSP have entered a Continuation Services Agreement Addendum, Client will comply with the applicable provisions of COBRA and state continuation laws, including, but not limited to, providing qualified beneficiaries covered by the Plans with initial COBRA notices, notices upon a qualifying event, notices of unavailability, termination notices, and other information concerning COBRA elections.

### **3.8 QMCSO Compliance**

Plan Administrator will be responsible for all aspects of compliance with Section 609(a) of ERISA regarding qualified medical child support orders ("QMCSO"), including, not limited to, establishing QMCSO procedures and determining whether a medical child support order is "qualified." Plan Administrator shall provide notice to PSP of any Covered Individuals covered under the Plan by virtue of a QMCSO and of any Covered Individuals who cease to be covered under the Plan by virtue of the expiration of a QMCSO. PSP will be entitled to rely upon the information provided by Plan Administrator pertaining to QMCSOs.

### **3.9 Fees**

In consideration for the services provided by PSP consistent with this Agreement, Client will timely pay to PSP the applicable compensation and fees in accordance this Agreement.

### **3.10 Indemnification by Client**

Client will indemnify and hold harmless PSP, its officers, directors and employees (collectively "PSP Indemnitees") from and against all losses, penalties, liabilities, damages, expenses, or other obligations, including reasonable attorneys' fees, resulting from, or arising out of a claim, demand, judgment, settlement agreement, regulatory action or proceeding, or lawsuit not directly attributable to the gross negligence of a PSP Indemnitee or a breach by PSP of the standard of care set forth in Article 2.3 in this Agreement. In addition, Client will indemnify and hold harmless PSP and PSP Indemnites from and against any liability, expense, demand or other obligation resulting from any premium charge, tax, penalty or similar assessment arising from or related to the Benefit Plans.

### **3.11 Determination of Employee Status**

Client is responsible for determining whether, and to what extent, individuals are "employees," of Client as defined in the Code. PSP will not be held liable for, and Client will indemnify and hold PSP harmless from, any and all damages, fines, penalties, or taxes which may be imposed as a result of the status of Client as a professional Client organization (PEO) or of any individual's status as an "employee."

## **ARTICLE IV. COMPENSATION**

### **4.1 Service Charges**

- (a) The applicable services charges and fees for the services performed by PSP in accordance with this Agreement are stated below and in the applicable Services Appendices:

- (b) Client expressly directs PSP to pay any fee, cost or charge then due to the PSP prior to application of funds to payment of claims or any other costs arising out of any Benefit Plan or subject matter of this Agreement. Client specifically directs that all funds provided to PSP under this Agreement will be disbursed in the following order: First to pay PSP Service Charges and fees, costs and related expenses incurred by PSP and second, to pay benefit claims arising under the respective Benefit Plan.
- (c) Section 5.12 notwithstanding, PSP may change the Service Charges for any reason at the beginning of each twelve (12)-month period beginning with the Effective Date set forth in Article 1.1 of this Agreement, provided that PSP notifies Client of such changes at least thirty (30) days before the beginning of such twelve (12)-month period. In addition, PSP may revise the Service Charges during the twelve (12)-month period, upon thirty (30) days prior written notice to Client, if changes to the Benefit Plans are made (regardless of the reason) that materially revise the nature or volume of the services contemplated by this Agreement.
- (d) Service charges will be assessed for any month during which services are performed or suspended pursuant to Section 5.9.
- (e) Interest will accrue on Service charges that have not been paid within thirty (30) days of the invoice date at the lesser of an interest rate of twelve percent (12%) annually, or the maximum interest rate permitted under applicable law. As part of its service fee, PSP will be entitled to retain any interest earned on funds held by PSP on Client's behalf in accordance with the terms of this Agreement.

#### **4.2 Payment of Charges**

All amounts due under this Agreement will be determined by PSP and billed to Client monthly, except as otherwise agreed by the Client and PSP, or as otherwise set forth in the Services Appendices. In addition to the Service Charges payable to PSP under this Agreement, Client will promptly pay PSP for any costs or expenses incurred by PSP related to (a) Client's failure to sufficiently fund claims, and/or (b) collection of amounts due PSP. For example, PSP may deduct the applicable Service Charges from any bank account that the Client is required to establish and maintain in accordance with this Agreement. All service charges are due on the date set forth in the invoice.

### **ARTICLE V. GENERAL PROVISIONS**

#### **5.1 Provisional Payment**

PSP may transmit credit entries through ACH. A credit given by the Receiving Depository Financial Institution ("RDFI") to the Client is provisional until the RDFI has received final settlement through a Federal Reserve Bank or has received payment as provided under Section 4A-403(a) of the Uniform Commercial Code. If the RDFI does not receive such payment for the credit entry, the RDFI is entitled to a refund from the Client in the amount of the credit to the Client's account, and PSP will not be considered to have paid the amount of the credit entry to Client. The rights and obligations of the parties pertaining to ACH transactions will be governed by and construed in accordance with the laws of the State of Utah, without giving effect to any conflicts of law principles.

#### **5.2 Limitation on Damages**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE MAXIMUM TOTAL LIABILITY OF PSP TO CLIENT WILL BE LIMITED TO DIRECT MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE LESSER OF: (A) THE TOTAL AMOUNT PAID BY CLIENT FOR THE DEFECTIVE SERVICE CAUSING THE DAMAGE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE LOSS; OR (B) \$10,000. THIS REMEDY IS CLIENT'S SOLE AND EXCLUSIVE REMEDY.

PSP WILL NOT BE RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, PENALTIES OR TAXES EVEN IF PSP HAS KNOWLEDGE OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. PSP WILL NOT BE RESPONSIBLE FOR FAILURE TO PROVIDE SERVICES IF DUE TO ANY CAUSE OR CONDITION BEYOND THE REASONABLE CONTROL OF PSP.

### **5.3 Audits**

Client, at its sole expense, may perform no more than one (1) audit each calendar year of the records in the possession of PSP specifically related to PSP's performance of its duties under this Agreement, subject to reasonable prior written notice to PSP. Audits must be performed during normal working hours established by PSP. An agent of Client may perform audits provided such agent signs a confidentiality agreement acceptable to PSP. Each party will provide such additional information and reports, in the usual format it maintains such requested information and reports, as the other party will reasonably request. PSP will be entitled to receive copies of the draft and final audit reports and will have the right to review and comment on audit findings prior to or simultaneous with the release of such report to Client. A Copy of PSP's comments will accompany the final audit report. Each party will provide reasonable assistance and information to the auditors. Client will reimburse PSP for PSPs' reasonable expenses, including copying and labor costs, in assisting Client to perform the audit.

### **5.4 Non-Disclosure of Proprietary Information**

Client and PSP each acknowledge that as a result of entering into this Agreement, each party has, and will continue to reveal and disclose to the other party, information that is proprietary and/or confidential. Client and PSP each will: (a) keep such proprietary and/or confidential information of the other party in strict confidence; (b) not disclose confidential information of the other party to any third parties or to any of its employees not having a legitimate need to know such information; and (c) will not use confidential information of the other party for any purpose not directly related to and necessary for the performance of its obligations under this Agreement (unless required to do so by a court of competent jurisdiction or a regulatory body having authority to require such disclosure). For purposes of this Article, confidential information is any information identified as confidential and/or proprietary (or words of similar import); including, but not limited to, the parties' respective businesses or finances. The terms and conditions of this Section will survive the termination of this Agreement. Information revealed or disclosed by a party for any purpose not directly related to and necessary for the performance of such party's obligations under this Agreement will not be considered confidential information for purposes hereof: (i) if, when, and to the extent such information is or becomes generally available to the public without the fault or negligence of the party receiving or disclosing the information; or (ii) if the unrestricted use of such information by the party receiving or disclosing the information has been expressly authorized in writing and in advance by an authorized representative of the other party.

### **5.5 Disclosure of Individually Identifiable Health Information**

Both parties agree to the additional limitations and conditions set forth in any HIPAA Confidentiality Appendix with respect to Covered Individuals' health information created or received by PSP in the course of performing its obligations under this Agreement. If there is a conflict between this Agreement and the HIPAA Confidentiality Appendix, the HIPAA Confidentiality Appendix will control but only with respect to the subject matter of the HIPAA Confidentiality Appendix.

### **5.6 Notices and Communications**

All notices required or permitted to be given in this Agreement will be in writing and delivered by confirmed facsimile; by guaranteed overnight mail, with tracing capability; by first class United States mail, with postage prepaid; or by email addressed to the other party at their respective addresses as set forth in the Contacts Appendix. PSP may communicate confidential, protected, privileged or otherwise sensitive information to Client through a named contact designated by Client ("Named Contact"). Client will indemnify PSP and hold it harmless for any such communications directed to Client through the Named Contact attempted via facsimile, mail, telephone, e-mail or any other media, and acknowledges the possibility that such communications may be inadvertently misrouted or intercepted.



## **5.7 Termination of Agreement**

- (a) Either party may terminate all, or part of this Agreement, for any reason subject to at least thirty (30) days prior written notice. This Agreement, however, will automatically terminate on the earliest of the following dates:
  - i. The date that all Benefit Plans for which related services are provided under this Agreement have been terminated, or if later, the date Client notifies PSP all Benefit Plans have been terminated;
  - ii. The date that Client becomes insolvent, bankrupt, subject to liquidation or conservatorship or receivership; or
  - iii. The effective date of the termination of the Business Associate Agreement between the parties.
- (b) PSP at its option may terminate this Agreement immediately upon written notice to Client effective as of the last day of the last period for which Client paid PSP the applicable service charges in accordance with the terms of this Agreement, if PSP determines that Client failed to make timely payments pursuant to this Agreement.

Termination of this Agreement will not terminate the rights or obligations of either party arising out of a period prior to such termination.

## **5.8 Dispute Resolution Procedure**

- (a) If either PSP or Client determines in good faith that a breach or dispute is sufficiently serious, the parties agree to attempt to resolve the breach or dispute in good faith and take remedial action to resolve it. If a dispute involving a material breach or violation of the terms of this Agreement is not successfully resolved by good faith remedial action or affirmative steps to cure the problem within thirty (30) days after the receipt of the written notice of the breach, the non-breaching party may elect to terminate this Agreement pursuant to Section 5.7.
- (b) Parties may also elect to follow an informal dispute resolution process by pursuing discussions between designees and their management and other normal business channels. Either party will have the right to seek immediate injunctive relief in the event of a violation of the confidentiality obligations or a breach of such party's intellectual property rights by the other party.

## **5.9 Suspension of Services**

PSP may, at its sole option upon written notice to Client, suspend its performance under this Agreement if Client does not timely and fully: (a) fund the claims for benefits processed by PSP; or (b) pay the fees and other charges due PSP pursuant to this Agreement, including for example overdraft fees and costs of collection. The fees payable to PSP under this Agreement will continue to accrue during the suspension period.

## **5.10 Interpretations**

The parties acknowledge and agree that both the rule of construction, to the effect that any ambiguities are resolved against the drafting party, and the terms and provisions of this Agreement, will be construed fairly as to all parties to this Agreement and not in favor of or against a party, regardless of which party was generally responsible for the preparation of this Agreement.

## **5.11 Compliance; Non-Waiver**

Failure by Client or PSP to insist upon strict performance of any provision of this Agreement will not modify such provision, render it unenforceable, or waive any subsequent breach. No waiver or modification of any of the terms or provisions of this Agreement will be valid unless in each instance the waiver or modification is accomplished pursuant to a written amendment signed by the authorized representatives of PSP and Client.

#### **5.12 Assignment; Amendment**

Except as otherwise provided in this Agreement, neither party can assign this Agreement without the other party's written consent, except that a tax affiliate (as defined in Section 414(b or c) of the Code) of PSP or Client may assume the respective obligations under this Agreement. This Agreement may be amended only by written agreement of duly authorized representatives of PSP and Client.

#### **5.13 Entire Agreement; Severability; Headings**

This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in this Agreement will affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement. If a court declares any term of this Agreement invalid, the same will not affect the validity of any other provision, provided that the basic purposes of this Agreement are achieved through the remaining valid provisions. The headings of sections and subsections contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

#### **5.14 Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the State of Idaho, without giving effect to any conflicts of law principles.

#### **5.15 No Third Party Beneficiaries**

Nothing express or implied in this Agreement is intended to confer, nor will anything in this Agreement confer, upon any person other than Client, PSP and their respective successors or assigns, any rights, remedies or obligations whatsoever.

#### **5.16 Relationship of the Parties**

PSP is, and will remain, an independent contractor and will not be an employee or partner of Client, engaged in a joint venture with Client, or governed by any legal relationship other than that of independent contractor.

#### **5.17 Force Majeure**

PSP will not be in default of this Agreement, nor held responsible for, cessation, interruption or delay in the performance of its obligations under this section due to causes beyond its control such as natural disasters, or the inability to obtain sufficient materials or services required in the conduct of its services such as internet access.

#### **5.18 Survival**

The indemnity, confidentiality and privacy provisions of this Agreement will survive any termination or expiration of this Agreement termination.

#### **5.19 Counterparts**

The parties may execute this Agreement in two or more counterparts each of which will constitute an original and all of which together will constitute one instrument.

**IN WITNESS WHEREOF**, Client and PSP have caused this Agreement to be executed in their names by their undersigned officers, the same being duly authorized to do so.

**PSP**

**Client**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

608 Northwest Boulevard, Suite 200  
Street

\_\_\_\_\_  
Street

Coeur d'Alene, ID 83814  
City/State/Zip Code

\_\_\_\_\_  
City/State/Zip Code

## BENEFIT PLAN SERVICES APPENDIX

The Client has established the following employee benefit plans for which it is engaging PSP to assist it with performing certain ministerial administrative services:

- ☐ A Code Section 125 Plan to allow eligible employees who make a proper election to pay for their share of certain benefit plan coverage with pre-tax salary reductions ("Cafeteria Plan").
- ☐ A Flexible Spending Account to allow participants to be reimbursed for eligible medical expenses ("FSA").
- ☐ A Code Section 105 health expense reimbursement plans ("HRA") to allow participants to be reimbursed for eligible medical expenses.
- ☐ A Code Section 129 dependent care assistance plan to allow participants to be reimbursed for eligible dependent care assistance expenses ("DCAP").
- ☐ A Premium Only Section 125 Plan ("POP").
- ☐ A Health Savings Account ("HSA").
- ☐ A Parking/Mass Transit Fee Plan ("Transportation Plan").
- ☐ A Section 115 Plan ("Section 115 Plan")

(Collectively the selected plans are referred to in this Appendix as "Benefit Plans")

PSP will perform services only with respect to the employee benefit plans for which PSP has provided the sample plan documentation or, if PSP's sample plan documentation is not utilized, then only such plans identified by Client and agreed to by PSP pursuant to separate written notice.

This Service Appendix is incorporated into, and made a part of, the Administrative Services Agreement (the "Agreement"). The effective date of this Service Appendix is the effective date of the Agreement or if later, the date that both parties have signed this Service Appendix as set forth below. The responsibilities of the parties set forth in this Service Appendix are in addition to any responsibilities set forth in the Agreement. If there is a conflict between this Service Appendix and the Agreement, the Agreement controls.

In consideration for the mutual promises set forth below, the Client and PSP agree as follows:

### A. Responsibilities of PSP

The services PSP will perform pursuant to this Appendix are limited to the following:

1. *Benefit Plan Documents and Forms*. PSP will provide sample plan documentation for the Benefit Plans for review by Client and its selected legal counsel. Such documentation will include, but not necessarily be limited to, plan document, summary plan description ("SPD"), board resolutions, adoption agreement, plan information summary, resource manual, employee communications package, payroll stuffers, announcement letter, and enrollment forms. PSP will customize such documentation only to the extent necessary to incorporate the Client's responses to certain plan design questions submitted by PSP. Client understands and acknowledges that it is responsible to ensure that all documents and forms for the Benefit Plans, including any template or sample documents and forms provided to Client by PSP in accordance with this Agreement, comply with the applicable laws and regulations. Although PSP has taken steps to provide sample documents and forms that are of the highest quality and intended to comply with the applicable laws, PSP cannot be aware of all of the facts and circumstances that

may apply to Client or the Benefit Plans. Consequently, PSP provides no warranty or representation regarding the compliance status of any documents or forms it provides to Client.

2. *Salary Reduction Elections.* All elections and changes to elections will be processed in accordance with the terms of the plan document adopted by Client and provided to PSP. PSP will also process Change of Status Elections consistent with Client's instructions. PSP will also maintain on-going records of activity affecting each employee election.
3. *Enrollment and Salary Election Services.* PSP will process and maintain employee census and salary reduction and employer contribution information for the applicable Benefits Plans based on the information provided by Client, including initial enrollments in the Benefit Plans, annual enrollments and changes made to such payroll deductions in accordance with the terms of the plan document for applicable Benefit Plan. PSP will process initial enrollment forms, Change of Status Elections and revocation forms based on information provided by Client. PSP will provide forms to Client to use for communicating participant elections, terminations and changes. PSP will process and send Pay Cycle Contribution Billing Reports to Client confirming the deductions that should be taken for premiums, flexible spending accounts, and personal policy plans. PSP will, on an as requested basis, provide periodic re-enrollment services. On an annual basis, PSP will provide a Change of Status Report and renewal elections forms.
4. *Processing of Reimbursements.* PSP will process requests for reimbursements made by Participants in accordance with the terms of this Agreement, its standard operating procedures, and the particular plan. For HRA reimbursement claims, the participant must submit a voucher (on the form provided by PSP) stating that the amount claimed has not been, nor will be reimbursed under any other health plan or otherwise, along with written proof of the claim from a third party documenting the date incurred, the nature and the cost of the claim. For FSA reimbursement claims, the participant must submit a voucher (on the form provided by PSP) stating that the amount claimed has not been, nor will be reimbursed under any other health plan or otherwise, along with written proof of the claim from a third party documenting the date incurred, the nature and the cost of the claim. For DCAP reimbursement claims, the participant must submit a voucher (form provided) containing the following required information: dependent's name; name, address and tax ID number of the dependent care provider; and the dates of services. Reimbursements under the 129 Plan are limited to the amount in the account. Unpaid portions of the DCAP voucher will be automatically paid during the check processing cycle after the next contribution has been posted to the account.
5. *Participant Assistance.* PSP will assist plan participants with general information pertaining to the Benefit Plans and answer routine questions concerning coverage status, claims status, complaint administration, and other general inquiries related to the Benefit Plans. Participants will have 24-hour access to their accounts balance, check history and voucher history for the current plan year via the internet and access to PSP's call center during normal business hours.
6. *Claims Processing.* PSP will administer and process claims for benefits in accordance with the Plan Document and Summary Plan description. Based on the eligibility information provided by Client, PSP will initially determine if an individual is entitled to benefits under a Benefit Plan and will process submitted claims in its usual and customary manner for the service options elected by Client. PSP will have no duty or obligation with respect to claims processed prior to the Effective Date ("Prior Reimbursement Requests"), if any, and/or plan administration (or other) services arising prior to the Effective Date ("Prior Administration"), if any, regardless of whether such services were/are to be performed prior to or after the Effective Date.

7. Claims Adjudication. PSP will have no discretionary authority to interpret the terms of a Benefit Plan or adjudicate claims. If processing a benefit claim requires interpretation of ambiguous plan language, and Client has not previously indicated to PSP the proper interpretation of the language, then Client will be responsible for resolving the ambiguity or any other dispute. PSP will make the initial determination on the first (1<sup>st</sup>) level of appeal (if a Benefit Plan has two (2) levels of appeal), regarding a claim for benefits under a Benefit Plan.
8. Benefit Payment Disbursements. PSP will disburse benefit payments that are determined to be payable in accordance with the terms of the applicable Benefit Plan as soon as reasonably possible after such determination is made, provided that sufficient funds have been made available by the Client (as set forth below) to pay such benefit payments. If sufficient funds have not been made available, PSP will notify Client that sufficient funds have not been made available. If sufficient funds have not been made available within thirty (30) days of the date that PSP has notified Client of the insufficiency, PSP in addition to its rights under the Agreement may, without risk of violating the Agreement or this Service Appendix, notify the affected participants that the Client has not made the funds available necessary to pay his or her claim.
9. Standard Reports. PSP will provide the Client its standard, written, semi-monthly reports summarizing the reimbursement account activities from the previous period, including a claims history report for all claims processed. PSP will provide electronically to Client, the following standard reports: standard reports for payroll setup of employee elections including employee deductions report; employee contribution report and Employee contribution spreadsheet; employee confirmation letters to verify elections when required; statements of participation by plan and participant as requested; annual reports of claim history and budget analysis reports; status and history reports such as account balance totals on each reimbursement check; account balances report on the Employee Account Status letter on a monthly basis during the final quarter of the plan year and account history reports and check history reports. PSP will also provide its standard initial administrative form originals for duplication as needed: reimbursement claim forms; participant instructions for filing claim forms; election enrollment; termination; and change of election forms. On a pay cycle basis, PSP will provide its following standard: Contribution Billing Report or electronic contribution file to be used to reconcile with payroll deduction amounts; reimbursement checks and/or direct deposits to employees on a pay cycle basis or on an approved schedule upon receipt of expense receipts and approved claim vouchers; and on-line Payment Registers. On a monthly basis, PSP will provide its standard following reports on an as needed basis: Cash Status Report; Request for Funds Report; and on-line Employee Account Balances. On an annual basis, PSP will provide: Employee Account Balance Report; and Plan Forfeitures and Account Close-Out reports.

Also, if a separate Reimbursement Card Services Appendix is attached hereto, PSP will make available to covered individuals, use of an electronic payment card through which eligible medical and/or dependent care expenses may be paid. The terms of usage of such electronic payment card and the rights and responsibilities of PSP and the Client with respect to such card will be set forth in a separate Appendix incorporated hereto by reference.

PSP reserves the right to modify its standard reports.

10. Transfer of Data. PSP will establish a standard procedure for exchanging information.

## B. Responsibilities of Client

1. Establishment and Operation of the Benefit Plans. Client has the sole responsibility and authority for establishment and operation of any employee benefit plans for which, pursuant to this Agreement, PSP is retained to perform administrative services. Client will have the sole discretionary authority and responsibility for designing, administering, construing and interpreting the provisions of employee benefit plans and deciding all questions of fact arising under the Benefit Plans. It is Client's sole responsibility and duty to ensure that the Benefit Plans comply in design and operation with all applicable laws and regulations, and PSP's provision of services under this Agreement does not relieve the Client of this obligation. Client will maintain the official records for the Benefit Plan consistent with applicable law. In the event that it is finally determined by a taxing authority or a court that premium taxes, or other taxes or assessments are due and payable by the Benefit Plans or Client with respect to the Benefit Plans, the Client will be responsible for the payment of such taxes. PSP will have no responsibility under this Agreement to pay such taxes or assessments and Client will not be entitled to any reimbursement for amounts paid for such taxes or assessments. Client understands that it is Client's responsibility to pay any tax, fee, penalty or assessments of a similar nature charged by the Internal Revenue Service, the Department of Labor, or other federal and/or state governmental agency arising from or relating to the Benefit Plans.
2. Plan Documentation. Client is responsible for reviewing draft plan documentation with its selected counsel to ensure that such documents comply with applicable law and that revisions made to such document by PSP on Client's instructions are complete and accurate. Client is responsible for making all other changes to the document(s) that it deems necessary. Client will notify PSP of all such changes made by Client as soon as possible but no later than the effective date of the changes. Client will provide PSP with a copy of the completed and properly executed plan document for each Benefit Plan. Client will provide PSP a copy of each amendment to a Benefit Plan by the earlier of: (a) fifteen (15) business days prior to the effective date of the amendment; (b) the date Client adopts the amendment; or (c) as soon as administratively feasible. PSP is responsible for providing services related to an amendment only upon its written consent to such amendment. PSP may condition its consent upon client's agreement to pay increased service fees.
3. Distribution of Plan Information, Reimbursements and Participant Statements. Client will distribute to employees, participants and beneficiaries the SPD and any other documents necessary to comply with the participant disclosure requirements under ERISA and/or other applicable laws. Client is also responsible for distributing checks, Explanation of Benefits (EOBs), and participant statements of account to employees.
4. Enrollment and Salary Reduction Elections. Client will provide eligible employees with enrollment, salary reduction and change of election forms provided by PSP. Client will collect and submit the completed enrollment forms, election forms and/or change of election forms to PSP as soon as possible after receipt of such forms, but at least five (5) business days prior to the first billing cycle for which any enrollment, elections, or change of elections is effective. Client is responsible for determining who is eligible to participate in the respective Benefit Plans and who has satisfied the requirements to become a participant in the Plan. Client will report all participant additions, terminations, and changes to PSP and all such changes will be effective two (2) weeks after receipt. In addition, the Client is ultimately responsible for determining whether a requested change in election is permitted.

5. Eligibility Determination & Information. Client will maintain current and accurate Benefit Plan eligibility and coverage records, determine and verify the individuals who satisfy eligibility requirements and provide current eligibility files to PSP in a format and at intervals acceptable to PSP. Client will notify PSP in writing of changes in eligibility (e.g., addition, termination, retirement, change in family status, expiration of QMSCO, etc.) at least five (5) business days prior to the first billing cycle for which any such eligibility change is effective. Client is solely responsible for matters pertaining to Client's failure to provide PSP accurate or timely eligibility information. PSP will have no responsibility for billing or coverage errors related to Client's failure to provide PSP timely or accurate information.
6. Authorization to Access Medical Records. Client will, if required by law, notify each individual benefiting under the applicable Benefit Plan and provide each individual with an opportunity to opt out (if required), or obtain from each individual, an adequate authorization for release of any personal financial records and medical records in accordance with applicable state and federal laws to permit the PSP to perform its obligations under this Agreement.
7. Regulatory Compliance. Client will: (a) ensure that the Benefit Plans, in design and operation, comply with all applicable laws and regulations, including, but not limited to, the Patient Protection and Affordable Care Act ("PPACA"), Code, ERISA, COBRA, FMLA, and HIPAA; (b) perform all nondiscrimination testing other than the testing specifically delegated to PSP in the attached Appendices; (c) take appropriate action to ensure the ongoing compliance of the Benefit Plan documents with applicable law; (d) file any required report or return with the applicable governmental agency; (e) calculate and pay any governmental or regulatory charges, assessments, fees and/or taxes due or payable by the Client or the Benefit Plans with respect to the establishment or operation of the Benefit Plans; (f) maintain the records of the Benefit Plans and (g) respond to any state or federal governmental agency request for information or audit.
8. Named Fiduciary and Plan Administrator. To the extent that a Benefit Plan is subject to ERISA, Client is the Named Fiduciary and Plan Administrator with respect to the Benefit Plan(s) as those terms are defined in Section(s) 3(16)(A) and 402(a)(1) ERISA.
9. Verification of Information Provided by PSP. Client will verify information provided by PSP, including the Administrative Contribution Billing Reports, provided by PSP to ensure that the information accurately reflects the activity recorded in the Client's payroll and reconciling the payroll deductions amounts paid with pre-tax dollars with the Administrative Contribution Billing Reports provided for that purpose each pay cycle by PSP.
10. Claims Adjudication. PSP will refer to Client or its designee for final determination, any claim for benefits or coverage appealed after initial denial by PSP, or any class of claims specified in writing by the Client. Client will be responsible for the final appeal determination as to whether a claim is payable under the terms of the Benefit Plans. Client will resolve all ambiguities and disputes relating to the eligibility, benefits, denial of claims or decisions regarding appeal or denial of claims, or any other plan document interpretation issues.
11. Funding and Liability for Claims and Benefit Plan Expenses. Client is responsible for payment of benefits under the Benefit Plans and Benefit Plan Expenses, including but not limited to, all benefits to participants in accordance with the plan document. Client will promptly make sufficient funds available to PSP for payment of benefits due for claims of individuals benefiting under the Benefit Plan. PSP will not advance its own funds if the Client does not provide sufficient funds for payment of claims. Client will also be responsible for payment of any costs or fees assessed to PSP associated with insufficient funding of claims.



- (a) Check Writing Authority over Client Account. If the Client chooses this option, the Client will make sufficient funds available from its general assets for amounts allocable to eligible reimbursement benefits under Benefit Plans by depositing funds in amounts specified by PSP from time to time in a Client-owned and named account (the "Account") at a financial institution selected by the Client and PSP, to facilitate the timely processing of claims under the Benefit Plans and give PSP withdrawal authority over such account. Client will also provide written proof that such funds have been made available. The Client bears sole responsibility for any fees imposed with respect to the Account by the financial institution and Client and PSP agree that PSP's fees may be withdrawn from such account.
  - (b) Benefits Payable from PSP's Custodial Account. If the Client chooses this option, Client will make sufficient funds available from its general assets for amounts allocable to eligible reimbursement benefits under the plans, as indicated by a claims report submitted by PSP, by electronically transferring such funds to a custodial clearing account designated by PSP. Client will make all transfers to PSP's account within two (2) days of receipt of the claims report from PSP.
- 12. Management Support. Client must provide management support in planning enrollment, meeting facilities and scheduling.
- 13. Client's Representation and Warranties Concerning Funds Provided to PSP. Client represents and warrants to PSP that:
  - (a) any funds submitted by Client, any former employee and/or qualified beneficiary to PSP for purposes of funding benefits under this Agreement (Client Funds): (a) are and will remain the general assets of the plan sponsor; (b) are not "plan assets" within the meaning of ERISA; (c) were never held in an account, fund, or trust bearing the name or otherwise held in an account of a Benefit Plan or any participants or beneficiaries thereof; and (d) will remain subject to the claims of plan sponsor's creditors at all times.
  - (b) Under this Agreement, where claims are paid by PSP through a custodial clearing account, the Client Funds will be held in a general account of Client until transferred to PSP as repayment for PSP's distributions on behalf of the Benefit Plans. The monies transferred to PSP constitute repayment of a debt owed by the Client to PSP and, upon proper transfer to PSP, become the property of PSP.
    - i. neither it nor any of its employees, directors, representatives, fiduciaries, or employee Benefit Plans (or any entity performing services for Client or such plans), nor any of its predecessors, successors or assigns have represented or will represent to any participant or beneficiary of the Benefit Plans that a separate account, fund, or trust is being held on behalf of the Benefit Plans that may be used to provide or secure benefits under the Benefit Plans;
    - ii. Client will advise the participants and beneficiaries of the Benefit Plans that the benefits under the Benefit Plans will at all times be paid out of the general assets of plan sponsor.

<b><u>Additional Services</u></b>	<b><u>Additional Fees</u></b>
These are provided only upon written request of the Client.	
1. <u>Consulting Services.</u> PSP will provide Benefit Plan consulting, including but not limited to, discussions regarding Benefit Plan design both initially and for any revisions regarding existing benefits, compliance and communications. The consulting includes cost estimates of initial plan, cost projections for any proposed plan revisions; and assistance in preparing summary plan descriptions	Quote
2. Requested changes to any standard administrative procedures established by PSP.	Quote
3. Exchanging information by means other than the standard procedure established by PSP. PSP will provide Client with several options for transferring data, including diskette, model file transfer or if the foregoing transfer methods are not available for the Client's payroll system, in a mutually acceptable format.	Quote
4. Provide assistance to Client regarding an IRS audit of the Benefit Plan years for which PSP was the service provider	Quote

## BENEFIT PLAN COMPLIANCE SERVICES APPENDIX

The Client has established one or more employee benefit plans which are subject to various compliance requirements under the Internal Revenue Code, ERISA or other applicable law. Client has engaged PSP to assist it with the ministerial functions related to performing compliance requirements for the following employee benefit plans:

- ☐ A Code Section 125 Plan to allow eligible employees who make a proper election to pay for their share of certain benefit plan coverage with pre-tax salary reductions ("Cafeteria Plan").
- ☐ A Flexible Spending Account to allow participants to be reimbursed for eligible medical expenses ("FSA").
- ☐ A Code Section 105 health expense reimbursement plans ("HRA") to allow participants to be reimbursed for eligible medical expenses.
- ☐ A Code Section 129 dependent care assistance plan to allow participants to be reimbursed for eligible dependent care assistance expenses ("DCAP".)
- ☐ A Premium Only Section 125 Plan ("POP").
- ☐ A Health Savings Account ("HSA").
- ☐ A Parking/Mass Transit Fee Plan ("Transportation Plan").
- ☐ A Section 115 Plan ("Section 115 Plan")
- ☐ A Section 501(9)(c) Plan

(Collectively the selected plans are referred to in this Appendix as "Benefit Plans").

PSP will provide assistance, designated below by Client, only with respect to the Benefits Plans selected above for which PSP has provided the sample plan documentation or, if PSP's sample plan documentation is not utilized, then only such plans identified by Client and agreed to by PSP pursuant to separate written notice.

This Service Appendix is incorporated into and made a part of the Administrative Services Agreement (the "Agreement"). The effective date of this Service Appendix is the effective date of the Agreement or if later, the date that both parties have signed this Service Appendix as set forth below. The responsibilities of the parties set forth in this Service Appendix are in addition to any responsibilities set forth in the Agreement. If there is a conflict between this Service Appendix and the Agreement, the Agreement controls.

### PSP and Client Responsibilities

The services PSP will perform pursuant to this Appendix are limited to those identified below as PSP responsibilities.

1. Forms 5500.

(a) PSP will assist Client in preparing the applicable Form 5500 for the:

i. \_\_\_\_\_ FSA

ii. \_\_\_\_\_ HRA

PSP will assist Client in preparing the applicable Form 5500 by providing, upon written request from the Client, any information maintained in PSP's database that is required

to be included on the Form 5500. Such information will be provided within thirty (30) days of the Client's request.

- (b) Client is responsible for determining whether a Form 5500 is required and for timely and accurately completing and submitting such Form 5500 to the appropriate governmental authority. Client is responsible for reviewing the information provided by PSP to ensure accuracy and completeness.

2. *Discrimination Testing.* PSP will, for the fees in the attached fees schedule, perform the discrimination testing elected by Client below:

☐ (a) *Cafeteria Plan Key Employee Concentration Test.*

- i. PSP will perform once per plan year the Key Employee Concentration Test for the Cafeteria Plan only. PSP will provide Client each plan year with a form requesting data necessary to complete the tests. PSP will complete the testing and provide a report summarizing its interpretations of the results, which are based solely on the information provided by Client and/or the data maintained by PSP in accordance with this Agreement, within a reasonable amount of time after receipt of the requested information in light of the applicable facts and circumstances that exist at the time PSP receives the completed data request form.
- ii. Client is responsible for completing the data request form and submitting it to PSP within the specified time frame.

☐ (b) *Code Section 105(h) Eligibility Test.*

- i. PSP will conduct, once per plan year, based solely on information provided by Client, the Eligibility Test required under Code Section 105(h). PSP will complete the testing and provide a report summarizing its interpretations of the results, which are based solely on the information provided by Client and/or the data maintained by PSP in accordance with this Agreement, within a reasonable amount of time after receipt of the requested information in light of the applicable facts and circumstances that exist at the time PSP receives the completed data request form.
- ii. Client is responsible for completing the data request form and submitting it to PSP within the specified time frame.

☐ (c) *Code Section 129 Nondiscrimination Testing.*

- i. PSP will conduct, once per plan year, based solely on information provided by Client, the following nondiscrimination testing required under Code Section 129: (i) Eligibility Test, (ii) fifty-five percent (55%) Average Benefits Test, and (iii) twenty-five percent (25%) Shareholder Concentration Test. PSP will provide Client, each plan year, with a form requesting data necessary to complete the tests. PSP will complete the testing and provide a report summarizing its interpretations of the results, which are based solely on the information provided by Client and information maintained by PSP in accordance with this Agreement, within a reasonable amount of time after receipt of the requested information in light of the applicable facts and circumstances that exist at the time PSP receives the completed data request form.

- ii. Client is responsible for completing the data request form and submitting it to PSP within the stated time period. Client is also responsible for performing any action required if the applicable plan becomes discriminatory.

3. Reporting under Code Section 6055 and 6056.

(a) Responsibilities of PSP.

- i. For provider reporting forms required to be filed in each calendar year during the term of this Agreement, PSP will complete the applicable Form 1094-B or 1094-C and corresponding 1095-B or 1095-C, based solely on information provided by Client, for each Employee and non-employee identified by Client.
- ii. For each Employee who worked for more than one ALE Member of the same Aggregated ALE Group, PSP will complete a separate Form 1095-C from each employer.
- iii. PSP will provide to Client by the later of January 15<sup>th</sup> or ten (10) business days after receipt of an accurate and complete data spreadsheet, the completed Form 1094-B or 1094-C and Form 1095-B or 1095-C for Client to distribute to Employees and file with the IRS.

(b) Responsibilities of Client. Client will:

- i. Determine who are/were full-time Employees during the relevant reporting period.
- ii. Determine if Client was an ALE during the relevant reporting period.
- iii. Determine if an offer of coverage for each Employee was “affordable” as that term is defined in Code § 36 B(c)(2)(c)(i).
- iv. Determine whether the coverage offered during the relevant reporting period provides minimum value as that term is defined in 26 C.F.R. § 54.4980H-1(a)(12).
- v. Ensure that the spreadsheet data transmitted to PSP for its use in preparing the IRS mandated reporting is complete, accurate, timely and in the format designated by PSP.
- vi. Review and verify the accuracy of Form 1094-B or 1094-C and corresponding 1095-B or 1095-C for each Employee and non-employee identified by Client and notify PSP of any changes within five (5) business days.
- vii. Distribute the 1095-C or 1095-B, as applicable, to each Employee in a manner designated by the IRS by January 31 of the year following the year to which the form relates.
- viii. File the Form 1094-B or 1094-C, along with the applicable Form 1095-B or 1095-Cs with the IRS, on or before February 28 (or March 31 if filed electronically), or other date designated by the IRS, of the year following the year to which the forms relate.
- ix. Pay any penalties, including late filing penalties, for failure to file correct information returns and/or failure to furnish correct payee statements.

- x. Client is solely responsible for Client's compliance with federal, state and local statutes, ordinances or regulations.

(c) Definitions. Whenever used in this Section 3, the following terms will have the respective meanings set forth below, unless the context clearly requires otherwise, and when the defined meaning is intended, the term is capitalized.

- i. Aggregated ALE Group. An Aggregated ALE Group refers to a group of ALE Members treated as a single employer under section 414(b), 414(c), 414(m), or 414(o). An ALE Member is a member of an Aggregated ALE Group for a month if it is treated as a single employer with the other members of the group on any day of the calendar month. If an ALE is made up of only one person or entity, that one ALE Member is not a part of an Aggregated ALE Group. Government entities and churches or conventions or associations of churches may apply a reasonable, good faith interpretation of the aggregation rules under section 414 in determining their status as an ALE or member of an Aggregated ALE Group.
- ii. Applicable Large Employer (ALE). An ALE is, for a particular calendar year, any single employer, or group of employers treated as an Aggregated ALE Group, that employed an average of at least 50 full-time employees (including full-time equivalent employees) on business days during the preceding calendar year. For purposes of determining an employer's average number of employees, disregard an employee for any month in which the employee has coverage under a plan described in section 4980H(c)(2)(F) (generally, TRICARE or Veterans Administration coverage). For 2015, an employer may determine its status as an ALE by reference to a period of at least six consecutive months during 2014 rather than the entire 2014 calendar year. A new employer (that is, an employer that was not in existence on any business day in the prior calendar year) is an ALE for the current calendar year if it reasonably expects to employ, and actually does employ, an average of at least 50 full-time employees (including full-time equivalent employees) on business days during the current calendar year.
- iii. Applicable Large Employer Member (ALE Member). An ALE Member is a single person or entity that is an ALE, or if applicable, each person or entity that is a member of an Aggregated ALE Group. A person or entity that does not have employees or only has employees with no hours of service (for example, only employees whose entire service consists of work outside of the United States that does not count as hours of service under section 4980H) is not an ALE Member.
- iv. Employee. For this purpose, an employee is an individual who is an employee under the common-law standard for determining employer-employee relationships. An employee does not include a sole proprietor, a partner in a partnership, an S corporation shareholder who owns at least 2-percent of the S corporation, a leased employee within the meaning of section 414(n) of the Code, or a worker that is a qualified real estate agent or direct seller. If an employee is an employee of more than one employer of the same Aggregated ALE Group during a calendar month, the employee is treated as an employee of the employer for whom the employee has the greatest number of hours of

service for that calendar month; if the employee has an equal number of hours of service for two or more employers of the same Aggregated ALE Group for the calendar month, those employers must treat one of the employers as the employer of that employee for that calendar month.

- v. Full-time Employee. A full-time employee is an employee who, for a calendar month, is employed an average of at least 30 hours of service per week with the employer. For this purpose, 130 service hours in a calendar month is treated as the monthly equivalent of at least 30 hours per week.

## **HIPAA CONFIDENTIALITY APPENDIX**

**Insert the executed Business Associate Agreement between PSP and the Plan.**



### FEE SCHEDULE APPENDIX

FSA, HRA, HSA, Parking/Mass Transit Fees	
Setup Fee	\$0.00
Annual Fee	\$250.00
Per Participant Per Month ("PPPM")	\$4.00
PPPM Combo Fee for 2 or more services	\$4.50
HSA Investment Fee per Month (Effective 10/1/2015)	\$2.25
Monthly Invoice Minimum Fee	\$50.00
Plan Document Only	\$500.00
Amendments to Plan Document	\$150.00
Thermal Logo on Debit Card One-Time Fee	\$500.00
HSA Check Fee	\$0.75
COBRA Option 1 Per Employee Pricing Option	
Setup Fee	\$250.00
Annual Fee	\$150.00
Per Employee Per Month ("PEPM")	\$1.10
Retiree Billing PPPM	\$4.00 + 1% of premium
Monthly Invoice Minimum Fee	\$25.00
COBRA Option 2 Per Letter Pricing Option	
Setup Fee	
Annual Fee	\$250.00
Per General Notice	\$150.00
Per Qualifying Event Notice	\$10.00
Monthly Invoice Minimum Fee	\$20.00
Monthly Invoice Minimum Fee	\$25.00
Combined Premium Billing	
PEPM	\$4.00
834 File Transfer Setup Fee per Carrier	\$2500.00
HRIS Platform per annum	\$5000.00
Commission Management	
PEPM	\$5.00
Non Discrimination Testing	
Standard Test (per test)	\$150.00
HRA Only Test (per test)	\$150.00
Expanded Test (per test)	\$300.00
Comprehensive Test (per test)	\$500.00
1095 Reporting	
Annual Setup Fee	\$1000.00
Per Employee Fulfillment Fee (Per Annum)	\$3.00

271728\_4

## **BUSINESS ASSOCIATE AGREEMENT**

### **Regarding**

### **DATA PRIVACY AND SECURITY**

This Business Associate Agreement (the "Agreement"), is made as of the **1 day of October, 2018** (the "Effective Date"), by and between Business Associate and Covered Entity (collectively the "Parties") to comply with privacy standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 CFR parts 160 and 164 ("the Privacy Rule") and security standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 CFR parts 160, 162 and 164, subpart C ("the Security Rule"), and the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 and regulations promulgated thereunder and any applicable state confidentiality laws.

### **RECITALS**

**WHEREAS**, Business Associate provides certain plan related services to or on behalf of Covered Entity;

**WHEREAS**, in connection with these services, Covered Entity discloses to Business Associate certain PHI that is subject to protection under the HIPAA Rules; and

**WHEREAS**, the HIPAA Rules require that Covered Entity receive adequate assurances that Business Associate will comply with certain obligations with respect to the PHI received in the course of providing services to or on behalf of Covered Entity.

**NOW THEREFORE**, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **SECTION 1 DEFINITIONS**

The terms used in this Agreement but not otherwise defined in this Agreement have the same meaning ascribed in the HIPAA Rules:

**A. Breach.**

"Breach" will have the same meaning as the term "breach" in 45 CFR §§ 164.402.

**B. Breach of Security.**

"Breach of Security," as that term is defined in 45 CFR §164.402, and which includes the unauthorized acquisition, access, use, or disclosure of PHI which compromises the security or privacy of the PHI, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information.

**C. Business Associate.**

"Business Associate" means **Peak1 Administration, LLC**.

**D. Confidential Personal Information.**

“Confidential Personal Information” will mean an Individual’s first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted: a) social security number; driver’s license number or government-issued identification number; or account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an Individual’s financial account; or b) information that identifies an Individual and relates to: the physical or mental health or condition of the Individual; the provision of health care to the Individual; or payment for the provision of health care to the Individual.

**E. Covered Entity.**

“Covered Entity” means **City of Coeur d’Alene**.

**F. Designated Record Set or DRS.**

“Designated Record Set” or “DRS” will have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501.B.

**G. Electronic Protected Health Information or PHI.**

“Electronic Protected Health Information or PHI” will have the meaning in the Security Rule, 45 CFR § 160.103.

**H. HIPAA Rules.**

“HIPAA Rules” means the Privacy, Security, Breach Notification and Enforcement Rules 45 CFR 160 and 164.

**I. Information.**

“Information” will mean any “health information” as defined in 45 CFR §160.103.

**J. Individual.**

“Individual” will mean the person who is the subject of the PHI and will include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

**K. National Provider Identifier.**

“National Provider Identifier” refers to the rules under 45 CFR Part 162 that require HIPAA covered entities to utilize a ten digit identifier in PHI related transactions.

**L. Protected Health Information or PHI.**

“Protected Health Information or PHI” means “protected health information” as defined in 45 CFR § 160.103 that is used, disclosed, transmitted or maintained in any form.

**M. Required By Law.**

“Required By Law” has the same meaning as the term required by law in 45 CFR § 164.501.

**N. Secretary.**

“Secretary” means the Secretary of the Department of Health and Human Services or his or her designee.

**O. Security Incident.**

“Security Incident” will have the same meaning as the term Security Incident in 45 CFR § 164.304.

**P. Unsecured PHI.**

“Unsecured PHI” will mean PHI that is not rendered unusable, unreadable, or undecipherable to unauthorized Individuals through the use of a technology or methodology specified by the Secretary.

## **SECTION 2 CONFIDENTIALITY AND HIPAA**

The Parties will comply with all applicable federal and state laws governing the confidentiality and privacy of health information including, without limitation, the HIPAA Rules, and Confidential Personal Information.

**A. Purposes for which PHI May Be Disclosed to Business Associate.**

In connection with the services provided by Business Associate to or on behalf of Covered Entity described in this Agreement and the service agreement, Covered Entity may disclose PHI to Business Associate in connection to any products and/or services rendered by Peak1 Administration LLC.

**B. Obligations of Business Associate.**

Business Associate represents warrants and covenants that:

(1) Use and Disclosure of Protected Health Information.

a) Business Associate, its directors, officers, subcontractors, employees, affiliates, agents, and representatives (collectively, “Representatives”): (i) will limit the use, transmission or disclosure of PHI and Confidential Personal Information to the minimum necessary consistent with the Covered Entity's policies and procedures to perform its duties and obligations under this Agreement and the agreement for services between the Covered Entity and the Business Associate (“Service Agreement”). The phrase “minimum necessary” will be interpreted in accordance with the Health Information Technology for Economic and Clinical Health Act (“HITECH”), HIPAA Rules and government guidance on the definition (i.e., that only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request is used or disclosed; and, the use of limited data sets when possible); (ii) will not use or disclose PHI other than as permitted or required by this Agreement, the Service Agreement, or as Required by Law; and (iii) will not use or disclose PHI in any manner that violates applicable laws or would violate such laws if used or disclosed in such manner by the Covered Entity.

b) Business Associate and its Representatives will provide adequate training to their respective workforces to ensure compliance with this Agreement and applicable law.

c) Subject to the restrictions stated in Section 2(B)(1)(a) above and throughout this Agreement, Business Associate may use the information received from Covered Entity if necessary for (i) the proper management and administration of Business Associate; or (ii) to carry out the legal responsibilities of Business Associate.

d) As between Business Associate and Covered Entity, all Plan confidential information, Confidential Personal Information and PHI will be and remain the sole property of Covered Entity or the Individual to whom the Confidential Personal Information or PHI relates, including any and all forms and copies of any such PHI developed or maintained by Business Associate or its Representatives. Neither Business Associate nor any of its Representatives will compile or distribute analyses to or for third parties using any PHI without Covered Entity's express written consent.

(2) Availability of Books and Records.

Business Associate will permit Covered Entity and Secretary and other regulatory and accreditation authorities to audit Business Associate's internal practices, books and records at reasonable times as they pertain to the use and disclosure of PHI received from, or created, maintained or received by Business Associate on behalf of, Covered Entity in order to ensure that Covered Entity and Business Associate are in compliance with the requirements of this Agreement and the HIPAA Rules or other applicable laws and regulations. Business Associate will cooperate in such audits and will provide copies of any documents reasonably requested by Covered Entity at no charge.

(3) Access of Individuals to Information.

a) Business Associate will, within five (5) days of a written request by Covered Entity or a request for information consistent with applicable law, make PHI about an Individual contained in a DRS available to the Covered Entity to enable Covered Entity to respond to a request by the Individual for access pursuant to 45 CFR § 164.524 or to the requesting Individual if the Business Associate receives the request directly. Business Associate will make available to Covered Entity such PHI for so long as such information is maintained in the DRS.

b) If Business Associate maintains a DRS for Covered Entity that is not maintained by Covered Entity, it will permit an Individual to inspect or copy PHI about the Individual in that set as directed by Covered Entity to meet the requirements of 45 CFR § 164.524. If the PHI is in electronic format, the Individual will have a right to obtain a copy of such information in electronic format and, if the Individual chooses, to direct that an electronic copy be transmitted directly to an entity or person designated by the Individual in accordance with HITECH section 13405 (c). Under the HIPAA Rules the Covered Entity is required to take action on such requests as soon as possible, but not later than 30 days following receipt of the request. Business Associate will make reasonable efforts to assist Covered Entity in meeting this deadline. The information will be provided in the form or format requested if it is readily producible in such form or format; or in summary, if the Individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying health information may be charged. If Covered Entity maintains the requested records, Covered Entity, rather than Business Associate will permit access according to its policies and procedures implementing the Privacy Rule.

c) Any denial of access to PHI determined by Covered Entity pursuant to 45 CFR § 164.524, and conveyed to Business Associate by Covered Entity, will be the responsibility of Covered Entity, including resolution or reporting of all appeals or complaints arising from denials.

d) Business Associate will support Covered Entity in a manner that enables Covered Entity to meet its obligations under 45 CFR § 164.524.

(4) Amendment of Information.

If Business Associate maintains PHI in a Designated Record Set, Business Associate will make amendments to PHI at the request and direction of Covered Entity pursuant to 45 CFR 164.526. If Business Associate maintains a record in a Designated Record Set that is not also maintained by Covered Entity, Business Associate will accommodate an Individual's request to amend PHI only in conjunction with a determination by Covered Entity that the amendment is appropriate according to 45 CFR § 164.526.

(5) Accounting of Permitted Disclosures.

a) Disclosure Accounting. To allow Covered Entity to meet its disclosure accounting obligations under 45 CFR § 164.528:

- (i) *Disclosures Subject to Accounting.* Business Associate will record the information specified below ("Disclosure Information") for each disclosure of PHI, not exempt from disclosure accounting as specified below, that Business Associate makes to Covered Entity or to a third party.
- (ii) *Disclosures Not Subject to Accounting.* Business Associate will not be obligated to record Disclosure Information or otherwise account for disclosures of PHI if the Covered Entity is not Required By Law to account for such disclosures.

b) Disclosure Information. With respect to any disclosure by Business Associate of PHI that is not exempt from disclosure accounting, Business Associate will record the following Disclosure Information as applicable to the type of accountable disclosure made:

- (i) *Disclosure Information Generally.* Except for repetitive disclosures of PHI as specified below, the Disclosure Information that Business Associate must record for each accountable disclosure is (i) the disclosure date, (ii) the name and (if known) address of the entity or Individual to which Business Associate made the disclosure, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose of the disclosure.
- (ii) *Disclosure Information for Repetitive Disclosures.* For repetitive disclosures of PHI that Business Associate makes for a single purpose to the same person or entity (including Covered Entity), the Disclosure Information that Business Associate must record is either the Disclosure Information specified above for each accountable disclosure, or (i) the Disclosure Information specified above for the first of the repetitive accountable disclosures; (ii) the frequency, interval, or number of the repetitive accountable disclosures; and (iii) the date of the last of the repetitive accountable disclosures.

c) Availability of Disclosure Information. Business Associate will maintain the Disclosure Information for at least six (6) years following the date of the accountable disclosure to which the Disclosure Information relates (three (3) years for disclosures related to an Electronic Health Record, starting with the date specified by the Department of Health and Human Services (HHS)). Business Associate will make the Disclosure Information available to Covered Entity within fifteen (15) calendar days following Covered Entity's request for such Disclosure Information to comply with an Individual's request for disclosure accounting. Effective as of the date specified by HHS with respect to disclosures related to an Electronic Health Record, Business Associate will provide the accounting directly to an Individual making such a disclosure request, if a direct response is requested by the Individual.

d) Business Associate will support Covered Entity in a manner that enables Covered Entity to meet its obligations under 45 CFR § 164.528 as soon as practicable, but not later than sixty (60) days.

(6) Compliance with Electronic Transactions Rule.

a) If Business Associate conducts in whole or in part electronic transactions on behalf of Covered Entity for which HHS has established standards, Business Associate will comply, and will require any Representatives it involves with the conduct of such transactions to comply, with each applicable requirement of the Electronic Transactions Rule. Business Associate will also comply with the National Provider Identifier requirements, if and to the extent applicable.

(7) De-identified Information.

Business Associate may use and disclose de-identified health information only with the prior written approval from the Covered Entity, and only if the PHI is de-identified in compliance with the HIPAA Rules. Moreover, Business Associate will review and comply with the requirements of this Agreement.

(8) Notice of Privacy Practices.

Business Associate will abide by the limitations of Covered Entity's Notice of Privacy Practices, of which it has knowledge. Any use or disclosure permitted by this Agreement may be amended by changes to Covered Entity's Notice of Privacy Practices; provided, however, that the amended Notice of Privacy Practice will not affect permitted uses and disclosures on which Business Associate relied prior to receiving notice of such amended Notice of Privacy Practice.

(9) Withdrawal of Authorization.

If the use or disclosure of PHI under this Agreement is based upon an Individual's specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, Business Associate will, if it has notice of such revocation, expiration, or invalidity, cease the use and disclosure of the Individual's PHI except to the extent it has relied on such use or disclosure, or if an exception under the HIPAA Rules expressly applies.

(10) Knowledge of HIPAA Rules.

Business Associate will review and understand the HIPAA Rules as it applies to Business Associate, and to comply with the applicable requirements of the HIPAA Rules, as well as any applicable amendments.

**C. Obligations of Covered Entity.**

(1) Use and Disclosure of Protected Health Information.

Covered Entity, its employees, affiliates, agents, and representatives:

- (a) Will comply with the HIPAA Rules in its use or disclosure of PHI;
- (b) Will not use or disclose PHI in any manner that violates applicable federal and state laws;
- (c) Will not request Business Associate to use or disclose PHI in any manner that violates applicable federal and state laws if such use or disclosure were done by Covered Entity;
- (d) May request Business Associate to disclose PHI directly to another party only for the purposes allowed by the HIPAA Rules;
- (e) Will provide Business Associate with any changes in or revocation of permission by Individual to use or disclose PHI if these changes affect Business Associate's permitted or required uses and disclosures;
- (f) Will notify Business Associate of any restrictions to the use or disclosure of PHI that Covered Entity has agreed to consistent with 45 CFR § 164.522; and
- (g) Will comply with the requirements of HITECH.

**SECTION 3  
DISCLOSURE TO THIRD PARTIES**

**A. Subcontractors and Agents.**

Business Associate will obtain and maintain a written agreement with each Representative that has or will receive, create, maintain, transmit or have access to PHI, on behalf of Business Associate, under which such Representative agrees to the same restrictions, requirements, and conditions that apply to Business Associate pursuant to this Agreement and applicable law.

Business Associate will also: (1) obtain reasonable assurances from the person to whom the PHI and Confidential Personal Information is disclosed that it will be held confidentially and used or further disclosed only to the minimum amount necessary consistent with applicable state and federal law, as Required By Law, or for the authorized purpose for which it was disclosed, and (2) obligate such person to promptly notify Business Associate of any instances of which it becomes aware in which the confidentiality of the PHI has been breached.

Business Associate will ensure that any Representative of Business Associate agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the paper or electronic PHI and Confidential Personal Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity. Business Associate will be liable to Covered Entity for any acts, failures or omissions of any of its Representatives in providing the services as if they were Business Associate's own acts, failures or omissions, to the extent permitted by law. Business Associate will specifically advise its



Representatives of, and require that its Representatives comply in all respects with the terms of this Agreement.

**B. Receiving Remuneration in Exchange for PHI.**

Neither Business Associate nor any of its Representatives will, directly or indirectly, receive remuneration in exchange for any use, transfer or access to any PHI or Confidential Personal Information of an Individual unless the Covered Entity or Business Associate obtained from the Individual a prior valid authorization that complies with applicable law that includes a specification of whether the PHI or Confidential Personal Information can be further exchanged for remuneration by the entity receiving PHI of that Individual.

**SECTION 4  
SAFEGUARDS**

**A. Implement Safeguards to Protect Confidentiality.**

Business Associate will develop, implement, use and maintain appropriate administrative, technical, and physical safeguards, consistent with the size and complexity of Business Associate's operations to ensure that PHI or Confidential Personal Information is not used or disclosed other than as provided by this Agreement or as Required by Law. Business Associate will implement administrative, physical and technical safeguards in compliance with Subpart C of 45 CFR Part 164 to reasonably and appropriately protect the confidentiality, integrity, and availability of any paper or electronic PHI it creates, receives, maintains, or transmits on behalf of Covered Entity in a manner consistent with the terms of this Agreement, the Service Agreement and applicable law.

Business Associate will assure that all PHI will be secured when accessed by Business Associate's Representatives. Any access to PHI by Business Associate's Representatives will be limited to legitimate business needs while working with PHI. Any personnel changes by Business Associate eliminating the legitimate business needs for such Representative to access to PHI – either by revision of duties or termination – will be immediately reported to Covered Entity. Such reporting will be made no later than the third business day after the personnel change becomes effective.

**B. Implement Safeguards to Protect Electronic Protected Health Information.**

Business Associate will develop, implement, and use appropriate administrative, physical, and technical safeguards consistent with applicable law and this Agreement that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI and Confidential Personal Information that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate will ensure that PHI and Confidential Personal Information contained in portable devices or removable media is encrypted.

Such safeguards will include, without limitation, implementing written policies and procedures in compliance with HIPAA and ARRA, conducting a security risk assessment, and training Business Associate employees who will have access to PHI with respect to the policies and procedures required by applicable HIPAA Rules.

**C. Annual Guidance.**

Business Associate will, at its own cost and effort, monitor the issuance of guidance by the Secretary on the most effective and appropriate technical safeguards for use in carrying out the security standards in subpart C of part 164 of title 45, Code of Federal Regulations.

**D. Privacy Provisions.**

The enhanced HIPAA privacy requirements including but not necessarily limited to accounting for certain PHI disclosures for treatment, restrictions on the sale of PHI, restrictions on marketing and fundraising communications, payment and health care operations contained Subtitle D of the HITECH Act that apply to the Covered entity will equally apply to the Business Associate.

**SECTION 5  
REPORTING OF BREACHES, IMPROPER DISCLOSURES,  
AND SECURITY INCIDENTS**

**A. Breaches.**

**(1) Reporting of Privacy or Security Breach.**

Business Associate will report to Covered Entity any use or disclosure of PHI by Business Associate or any Representatives not permitted by this Agreement and the Service Agreement along with any Breach or possible Breach of Unsecured PHI. Business Associate will treat the Breach or possible Breach as being discovered in accordance with 45 CFR § 164.410. Business Associate will make the report to Covered Entity's Privacy Official immediately following the discovery of a breach of such information. Initial notification of the breach does not need to be in compliance with Sub Title D Title IV Section 13402 of the HITECH Act; however, Business Associate must provide to Covered Entity in writing all information necessary for Covered Entity to comply with Sub Title D Title IV Section 13402 of the HITECH Act without delay, and in no case later than 15 days following the discovery of the breach. If a delay in notification is requested by a law-enforcement official in accordance with 45 CFR § 164.412, Business Associate may delay notifying Covered Entity for the applicable time period. Business Associate will prepare a written assessment of the risk of harm to the Individuals affected by the Breach and provide the same to the Covered Entity as soon as reasonably possible after discovery of the Breach. Business Associate will update its assessment as additional information is obtained and will provide all updated assessments to Covered Entity as soon as reasonably possible but not later than five (5) days after Business Associate obtains additional information.

**(2) Contents of Report of Breach.**

Business Associate's written report of a Breach and assessment required under paragraph (1) above pertaining to a Breach or possible Breach will include, at a minimum: (a) the identification of each Individual whose PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the Breach; (b) the date of the Breach, possible Breach, or other non-permitted use, access or disclosure, if known; (c) the nature and scope of the Breach, possible Breach, or other non-permitted use or disclosure; (d) who impermissibly used or to whom the information was impermissibly disclosed or committed the Breach; (e) the investigational actions Business Associate took or will take to prevent further non-permitted uses or disclosures; (f) the Business Associate's written assessment of whether there is a low probability

that the PHI has been compromised, along with the basis for its assessment; (g) a description of the Business Associate's response to the Breach, including steps taken to mitigate the risk of harm; (h) steps affected Individuals should take to protect themselves; and (i) if the Business Associate asserts that the impermissible use or disclosure falls within one of the exceptions to the definition of "breach" under 45 CFR § 164.402, which exception.

The Business Associate will promptly notify Covered Entity, in writing, of any additional information relevant to the impermissible use, access or disclosure of information as it becomes available. The Business Associate, upon request by the Covered Entity, will provide Covered Entity all information relevant to Business Associate's written assessment of harm to affected Individuals.

(3) Breach Notification to Individuals.

Business Associate expressly recognizes that Covered Entity has certain reporting and disclosure obligations to the Secretary and the Individual in case of a security breach of Unsecured PHI. Business Associate must provide to Covered Entity in writing all information necessary for Covered Entity to comply with Sub Title D Title IV Section 13402 of the HITECH Act without reasonable delay, and in no case later than 30 days following the discovery of the breach. Business Associate's duty to notify Covered Entity of any breach does not permit Business Associate to notify those Individuals whose PHI has been breached by Business Associate without the express written permission of Covered Entity to do so. Any and all notification to those Individuals whose PHI has been breached will be made under the direction, review and control of Covered Entity.

(4) Breach Notification for Other Confidential Personal Information.

In addition to the reporting under paragraph 1, Business Associate will notify Covered Entity of any breach of computerized Confidential Personal Information. Such notification will include the information required under paragraph (2) above.

(5) Mitigation.

In the event of a Breach by Business Associate or any Representative, Business Associate at its sole cost will, in consultation with Covered Entity, mitigate, to the extent practicable, any harmful effect of such Breach that is known to Business Associate. Business Associate will cooperate with Covered Entity in preparing and providing notification to affected Individuals or Secretary of a Breach of Unsecured PHI that the Covered Entity determines is appropriate. The Business Associate will pay all reasonable costs incurred by Covered Entity related to addressing a Breach of Unsecured PHI maintained or under the control of Business Associate or its Representatives.

**B. Improper Disclosures.**

Business Associate will track all disclosures of PHI to third parties, including those made to Business Associate's Representatives, other than those disclosures that meet the exception criteria of 45 CFR § 164.528.

Business Associate will report to Covered Entity any use or disclosure of any PHI by Business Associate or its Representatives that does not constitute a Breach, but is an unauthorized or improper use or disclosure of any PHI under this Agreement or applicable federal and state laws. Business Associate will report to Covered Entity any such unauthorized use or disclosure as soon as practicable, but in no event later than

five (5) business days of the date on which Business Associate becomes aware of such use or disclosure. In the event of an unauthorized use or disclosure, Business Associate will at its sole cost, in consultation with Covered Entity, mitigate, to the extent practicable, any harmful effect of any such disclosure that is known to Business Associate under the same terms that Business Associate would mitigate a Breach.

**C. Security Incidents.**

Business Associate will report to Covered Entity any attempted or successful (1) unauthorized access, use, disclosure, modification, or destruction of Electronic PHI, or (2) interference with Business Associate's system operations in Business Associate's information systems that contain Electronic PHI, of which Business Associate becomes aware. Business Associate will make this report by the fifth (5<sup>th</sup>) day of the month immediately following any such security incident, except if any such security incident resulted in a disclosure not permitted by this Agreement or Breach of Unsecured PHI, Business Associate will make the report in accordance with the provisions set forth in the paragraph above.

**D. Equitable Remedies.**

Business Associate acknowledges and agrees that Covered Entity will suffer irreparable damage upon Business Associate's breach of this Agreement, and that such damages will be difficult to quantify.

Business Associate acknowledges and agrees that Covered Entity may file an action for an injunction to enforce the terms of this Agreement against Business Associate, in addition to any other remedy Covered Entity may have. Where Covered Entity has knowledge of any material breach by Business Associate, Covered Entity may take proceedings against Business Associate before any Court having jurisdiction to obtain an injunction or any legal proceedings to cure or stop such material breach, without more notice than is set forth in Section 7.H. of this Agreement.

**E. Penalties for Noncompliance.**

Business Associate acknowledges that it is subject to civil and criminal enforcement for failure to comply with the HIPAA Rules and sections 1176 and 1177 of the Social Security Act (42 USC § 1320d-5, 1320d-5) will apply to Business Associate with respect to such violation in the same manner that such sections apply to Covered Entity if it violates such provisions.

## **SECTION 6**

### **TERM AND TERMINATION**

#### **A. General Term and Termination.**

This Agreement will become effective on the Effective Date and will terminate upon the termination or expiration of the Service Agreement and when all PHI and Confidential Personal Information provided by either party to the other, or created or received by Business Associate on behalf of Covered Entity is, in accordance with Section 6.C below, destroyed or returned to Covered Entity or, if it is not feasible to return or destroy PHI or Confidential Personal Information, the protections are extended to such information, in accordance with the terms of this Agreement.

#### **B. Material Breach.**

Where either Party has knowledge of a material breach by the other Party of its obligations under this Agreement, and if a cure is possible, the breaching Party will have an opportunity to cure. If the breaching Party does not cure the breach within ten (10) business days of breaching Party's receipt of notice from the non-breaching Party, the non-breaching Party may terminate this Agreement and the Service Agreement.

Covered Entity will have the right to cure any breach of Business Associate's obligations under this Agreement at the sole expense of Business Associate. Covered Entity will give Business Associate notice of its election to cure any such breach, and Business Associate will cooperate fully in the efforts by Covered Entity to cure Business Associate's breach. Business Associate will remit payment to the Covered Entity for costs incurred to cure Business Associate's breach within fifteen (15) business days of Covered Entity's request for payment.

In the event that either Party has knowledge of a material breach of this Agreement by the other Party and cure is not possible, the non-breaching Party may terminate this Agreement and the Service Agreement. When neither cure nor termination is feasible, the non-breaching Party may report the violation to the Secretary.

#### **C. Effect of Termination.**

(1) Return or destruction of PHI and Confidential Personal Information if feasible.

Except as provided in paragraph (2) of this sub-section below, upon termination of this Agreement for any reason, Business Associate will, if feasible, return or destroy all PHI and Confidential Personal Information received from Covered Entity, or created or received by Business Associate and its subcontractors on behalf of Covered Entity that Business Associate maintains in any form. Business Associate will not retain any copies of the PHI or Confidential Personal Information. If return of PHI or Confidential Personal Information is not feasible, Business Associate will destroy all such information in accordance with applicable law and guidelines published by HHS. Business Associate will document in writing the destruction of PHI and Confidential Personal Information by the Business Associate including at a minimum:

- Date of destruction.
- Method of destruction.
- Description of the destroyed record series or medium.

- Inclusive dates covered.
- The signatures of the Individuals supervising and witnessing the destruction.

Business Associate must provide this documentation to Covered Entity within thirty (30) days of termination of this Agreement.

This provision will also apply to PHI and Confidential Personal Information that is in the control of Representatives of Business Associate.

(2) Procedure When Return or Destruction is not Feasible.

If Business Associate notifies Covered Entity of the conditions that make return or destruction of PHI and Confidential Personal Information infeasible, upon mutual agreement of the Parties that return or destruction of PHI and Confidential Personal Information is infeasible, Business Associate will extend the protections of this Agreement to the PHI and Confidential Personal Information retained and limit further uses and disclosures of the PHI and Confidential Personal Information to those purposes that make the return or destruction infeasible, for as long as Business Associate or any Representative maintains the PHI or Confidential Personal Information.

(3) Continuing Privacy and Security Obligation.

Business Associate's obligation to protect the privacy and safeguard the security of PHI and Confidential Personal Information and report any impermissible use or disclosure as specified in this Agreement will be continuous and survive termination or other conclusion of this Agreement.

**D. Transition.**

Upon termination of this Agreement for any reason, Business Associate upon request by Covered Entity will transmit the PHI and Confidential Personal Information maintained, created or received by Business Associate or its Representatives to the entity or Individual designated by Covered Entity.

## SECTION 7 MISCELLANEOUS

**A. Regulatory References.**

A reference in this Agreement to a Section in the HIPAA Rules means the Section as in effect or as amended.

**B. Interpretation.**

Any ambiguity in this Agreement will be resolved to permit Covered Entity to comply with the HIPAA Rules.

**C. No Third Party Beneficiaries.**

Except as expressly provided for in the HIPAA Rules, there are no third party beneficiaries to this Agreement. Business Associate's obligations under this Agreement are owed to the Covered Entity only.

**D. Amendment.**

The Parties will take any action necessary to amend this Agreement from time to time to enable the Covered Entity and Business Associate to comply with the requirements of the HIPAA Rules, the Health Insurance Portability and Accountability Act, Public Law 104-191 and HITECH or other applicable privacy laws. This Agreement may not be modified except by a written amendment or modification executed by both Parties.

**E. Counterparts.**

This Agreement may be executed in two or more counterparts, each of which will be an original, but all of which taken together will constitute one instrument. An electronic copy of an executed original will be valid as an original.

**F. Conflicting Terms.**

In the event any terms of this Agreement conflict with any terms of the Service Agreement, the terms of this Agreement will govern and control.

**G. Idaho Law; Submission to Jurisdiction; Waiver of Jury Trial.**

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF IDAHO, TO THE EXTENT NOT PREEMPTED BY FEDERAL LAW, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY IN THIS AGREEMENT SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KOOTENAI COUNTY AND OF ANY IDAHO STATE COURT SITTING IN KOOTENAI COUNTY FOR PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY TO THIS AGREEMENT IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**H. Notices.**

All notices, requests, approvals, demands and other communications required or permitted to be given under this Agreement must be in writing and delivered either personally, or by certified mail with postage prepaid and return receipt requested, or by overnight courier to the party to be notified. All communications will be deemed given when received. The addresses of the parties will be as follows; or as otherwise designated by any party through notice to the other party:

If to Covered Entity:

**City of Coeur d'Alene  
710 Mullan Ave  
Coeur d Alene ID 83814**

If to Business Associate:

**Peak1 Administration, LLC  
608 Northwest Boulevard, Suite 200  
Coeur d'Alene, ID 83814**

**I. Survival.**

The obligations of Business Associate under Sections 2, 4, 5, 6 and 7 will survive the termination or other completion of this Agreement for as long as Business Associate maintains any PHI of the Covered Entity.

**J. Merger.**

This Agreement constitutes the entire understanding between the parties and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between the parties, with respect to the matters of this Agreement.

**K. Waiver.**

A failure by either party to enforce the other party's performance of a provision of this Agreement will not constitute a waiver of the right to subsequently enforce that provision or any other provision of this Agreement.

**L. Severability.**

If a court of competent jurisdiction finds a provision of this Agreement unenforceable, it will not be given effect, and the remainder of the Agreement will be enforced as if such provision was not included.

**M. Recitals.**

The recitals on page one (1) of this Agreement are restated and incorporated by this reference, and will form part of this Agreement.

**N. Headings.**



Headings within this Agreement are for convenience only and will have no effect in limiting or extending the language of the provisions to which they refer.

**O. Assignment.**

Neither party may directly or indirectly assign or transfer this Agreement by operation of law or otherwise without the prior consent of the other Party. All obligations contained in this Agreement will extend to and be binding upon the Parties to this Agreement and their respective successors, assigns, and designees.

**IN WITNESS WHEREOF**, the authorized representatives of the Covered Entity and Business Associate have executed this Agreement as of the Effective Date.

**COVERED ENTITY – CITY OF COEUR D ALENE**

**BUSINESSASSOCIATE - PEAK1 ADMIN.**

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

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

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

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

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

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

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

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

140812\_2