



BENEFIT RESOURCE MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") is entered into by Benefit Resource, LLC on behalf of itself and certain affiliates (collectively, "BRI"), and Teachers' Retirement System of Kentucky, as plan sponsor of certain group benefit plans ("Employer"), effective May 1, 2024 (the "Effective Date").

WHEREAS, BRI is a provider of benefit plan administration services; and

WHEREAS, Employer sponsors one or more group benefit plans (each a "Plan" and collectively, "Plans"); and

WHEREAS, Employer seeks to engage BRI to provide certain benefit plan administration services for Plans sponsored by Employer.

NOW, THEREFORE, as of the Effective Date and in consideration of the terms and conditions contained herein, BRI and Employer agree as follows:

1. Services.

- a. Selection of Services. Employer may select one or more services (each a "Service" and collectively, the "Services") through the completion of an addendum (each an "Addendum" and collectively, "Addenda"). As of the Effective Date, BRI shall provide the Services selected by Employer in a manner consistent with this Agreement, and Employer hereby authorizes BRI to provide the Services in such a manner. Each Addendum attached to this Agreement on the Effective Date, or attached at any date thereof, shall be incorporated into and become a part of this Agreement and subject to all of the terms and conditions hereunder. If there is any discrepancy between this Agreement and an Addendum, the Addendum shall control.
- b. Standard of Care. All Services hereunder shall (i) be performed by experienced, qualified personnel, (ii) reflect and adhere to generally accepted and reasonable industry standards and (iii) in each instance, be performed with the care, skill, prudence and diligence under the circumstances then prevailing as would a prudent person, acting in a like capacity and familiar with such matters.
- c. No Warranty. Except as outlined in this Agreement, BRI makes no representation and makes no warranty of any kind, either express or implied, with respect to the Services performed under this Agreement.
- d. MMSEA Reporting. In the event BRI is the "Registered Reporting Entity" for purposes of required Medicare Secondary Payer reporting under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 ("MMSEA"), BRI shall not be liable in the event Employer has not provided all required information, or an individual refuses to provide a Social Security Number ("SSN"). In such event where an individual refuses to provide an SSN, the Employer shall have the participant sign a form that allows individuals to explain their refusal to provide requested information and shall return the signed form to BRI for its files. In the event the participant refuses to sign the form, BRI may deny enrollment.

2. Fees and Payment.

- a. Employer's Fee for Services. Each Addendum will specify the fee for a particular Service. Employer agrees to pay the fee specified in an Addendum. After the initial term of the Agreement, BRI may change any fees, as long as it provides Employer with advance electronic or written notice of the fee change at least sixty (60) days before such fee change becomes effective. Such notice shall be deemed to amend the fee portion of the applicable Addendum.
- b. Indirect Fees. In addition to the fees set forth in Addenda, BRI may, in connection with the provision of Services, receive interest, investment income and/or similar payments from third parties. Employer acknowledges that BRI will retain such payments as additional consideration for the Services BRI provides hereunder.

- c. Payment. BRI shall invoice Employer monthly, in arrears, for all Services rendered during the prior month. Full payment is due no later than thirty (30) days after the invoice date. Payments not received in accordance with this section shall bear a late fee of two percent (2%) per month (or if less, the highest rate allowed by applicable law) from the due date until paid in full by Employer. If discrepancies are found, Employer shall notify BRI within a reasonable period of time, not to exceed sixty (60) days.
- d. Third-Party Payment. If Employer arranges for a third party to make payments on its behalf (for example, a broker of record), Employer acknowledges that it remains responsible for any payments due under this Agreement but not made by such third party.

3. Employer Responsibilities and Representations.

- a. Plan Compliance. Employer is solely responsible for a Plan's design, documentary, operational, and administrative compliance with all applicable laws.
- b. Plan Administration. Employer is solely responsible for a Plan's administration, except to the extent expressly delegated to BRI in this Agreement. BRI is not the "administrator" of any Plan, as defined by the Employee Retirement Income and Security Act ("ERISA"), if applicable.
- c. Plan Interpretation. Employer is solely responsible for making any determinations related to eligibility, claims, or other inquiries under the Plans, unless expressly stated in this Agreement. Employer has the sole responsibility to construe the terms of the Plans and to interpret any ambiguous Plan language.
- d. Plan Funding. Employer will provide BRI applicable funds from Employer's bank account in order to fund the Plan(s). Employer is solely responsible for funding any benefits provided under a Plan and any other liability related to a Plan. Employer acknowledges that BRI is neither funding, insuring, nor underwriting any benefits or other liability under or related to a Plan. Employer agrees to pay BRI the entire amount owed for Participant spending, in any Plan, regardless of whether Employer collects sufficient payroll deductions. Additionally, Employer may be required to provide BRI a "Prefund Amount" calculated in accordance with BRI's standard operating procedures based on expected Plan usage and communicated to the Employer in writing (with email sufficing). Once communicated to Employer, such Prefund Amount will be collected within two (2) business days. If the balance of funds held on behalf of the Employer falls below the Prefund Amount, Employer agrees to make an additional contribution equal to the difference between the Prefund Amount and the balance within two (2) business days of being informed in writing (with email sufficing) of such shortfall. Employer shall elect to fund the Plan in accordance with one of the options set forth below:
 - i. If Employer elects to fund based on claims activity, Employer shall send BRI an amount as necessary to satisfy payment of qualified expenses under the Plan in a frequency determined by BRI and communicated to Employer.
 - ii. If Employer elects to fund based on payroll deductions, Employer shall send BRI within two (2) days of each pay date, the amount of such payroll deductions as established for the Plan(s).
- e. Fiduciary Status. Employer represents that it is a "fiduciary" with respect to any of the Plans governed by ERISA, as such term is defined in ERISA. Employer acknowledges that BRI is not a "fiduciary," as such term is defined in ERISA or for purposes of other applicable laws, with respect to any Plan, unless expressly stated in this Agreement.
- f. Reliance. Employer shall provide any and all information reasonably deemed necessary by BRI for the performance of Services hereunder. Such information shall be complete, accurate, and supplied in a timely manner. Employer acknowledges that BRI will rely on the information provided by Employer, and that BRI has

no duty to inquire whether such information is complete and/or accurate. Employer is responsible for any Service delays and/or deficiencies attributable to Employer's failure to provide complete, accurate and/or timely information.

- g. Escheatment. Employer shall be solely responsible for compliance with all escheatment obligations.

4. Confidentiality, Data Security and Retention.

- a. Confidential Information. "Confidential Information" means any information (without regard to the medium on which such information may be recorded, whether written, visual, audio, graphic, electronic or otherwise) concerning or relating to the property, business, customers, systems, personnel and/or affairs of Employer. Unless such Confidential Information was previously known to either party free of any obligation to keep it confidential, or is subsequently made public by any third party having a legal right to make such disclosure, the parties agree to hold Confidential Information in confidence and also agree that Confidential Information shall be used only for the purposes provided for in this Agreement. For the avoidance of doubt, Confidential Information shall not include Protected Health Information ("PHI"), as the parties intend to enter into a business associate agreement to address the confidential treatment of PHI. The business associate agreement is attached as an Addendum to this Agreement.
- b. Compliance with Privacy Laws. The parties agree to abide by applicable laws that govern the privacy and security of any information exchanged in connection with this Agreement.
- c. Permitted Disclosure of Confidential Information. Each party acknowledges and agrees that the other party may be required to disclose Confidential Information to governmental agencies, courts or similar authorities pursuant to applicable law, a subpoena, a court order or other legal process, and that such disclosure shall not be considered to be a violation of this Agreement, provided the party receiving the disclosure request shall endeavor to provide reasonable electronic, telephonic or written notice to the other party prior to disclosure so to allow the other party sufficient opportunity to take action necessary to protect its Confidential Information. In addition, Employer may request BRI to share Employer's Confidential Information with another vendor, in which case, BRI shall comply but may condition compliance on Employer, BRI and/or vendor, as appropriate, entering into an information sharing and/or confidentiality agreement.
- d. Data Security. Each party agrees that it shall use the same degree of care to safeguard the Confidential Information as it utilizes to safeguard its own Confidential Information. BRI will provide a summary of security procedures to the Employer.
- e. Retention. BRI shall retain copies of information (including Confidential Information) provided by Employer in connection with this Agreement for a period of seven (7) years from the date such information is provided, or if sooner, until the date this Agreement terminates, subject to applicable laws. However, BRI may retain a copy of all information provided by Employer following termination of this Agreement, in which case, retention and disclosure thereof will comply with this Section 4.

5. Term and Termination.

- a. General. The initial term of this agreement shall begin on the Effective Date and shall continue until December 31, 2024. Following the initial term, this Agreement shall automatically renew for a period of twelve (12) months. "Term" shall refer to the initial term plus any applicable renewal period(s). Notwithstanding the foregoing, if a specific benefit provided under this Agreement through an Addenda has a different term of services as a result of an initial term or renewal term as agreed to by the parties, such longer term shall govern. Further, in no event shall this Agreement terminate prior to the expiration date of any benefit provided through an Addenda to this Agreement as attached hereto.
- b. Termination Without Cause. Either party may terminate this Agreement at any point during the Term if such party provides written notice to the other party at least sixty (60) days in advance of the proposed termination date. Employer shall be responsible to pay all amounts due and owing upon termination.
- c. Termination for Default. If a party is in default under any provision of this Agreement, the non-defaulting party may provide written notice to terminate this Agreement to the defaulting party. If the defaulting party fails to

cure the default by the date specified in the notice (such date shall be no earlier than thirty (30) days from the date the notice is provided), the non-defaulting party may terminate this Agreement upon written notice to the defaulting party.

- d. Automatic Termination. Notwithstanding the foregoing, this Agreement will automatically terminate at any point during the Term if (i) a change in applicable law renders the Agreement prohibited or void, or (ii) either party is adjudicated bankrupt, becomes insolvent, has a receiver of its assets or property appointed, makes a general assignment for the benefit of creditors, or institutes or causes to be instituted any procedure for reorganization or rearrangement of its affairs.
- e. Run-Out Period. BRI will cease providing services as of the Agreement's termination date. However, the parties may agree to extend the Services beyond the termination of this Agreement, in which case, this Agreement shall continue to apply during any "run-out period." BRI may require pre-payment of any fees that would be due for Services provided during the run-out period.
- f. Post-Termination. Following termination of this Agreement (or any run-out period, as applicable), BRI will, upon request from Employer, provide Employer or its vendor copies of Employer's data and records related to the Services provided hereunder, in a format designated by BRI, subject to the requirements of Section 4.

6. Dispute Resolution and Arbitration.

- a. Good Faith Consultation. The parties shall consult in good faith with each other to resolve any disputes arising under this Agreement for at least thirty (30) days after one party has given notice of the dispute to the other party.
- b. Venue. Any action arising under or in relation to this Agreement shall be brought in the Franklin Circuit Court in Frankfort, Kentucky.

7. Indemnity and Limitation of Liability.

- a. Indemnity. BRI acknowledges that Employer is an agency of the Commonwealth of Kentucky and Employer has informed BRI that Employer is prohibited by the Kentucky Constitution from indemnifying BRI; however, to the extent that Employer may be able effectively to agree under Kentucky law, if at all, each party will defend, indemnify and hold harmless the other party and its respective officers, directors, agents, employees, representatives, successors and assigns (collectively, the "Indemnified Parties") from and against any and all third party liability, damages, losses, expenses (including reasonable attorney's fees), taxes and/or penalties incurred by an Indemnified Party in connection with this Agreement and the provision of Services hereunder, except to the extent solely caused by the other Party's gross negligence or willful misconduct. BRI acknowledges that such indemnification may be deemed unenforceable under Kentucky law.
- b. Damages. No party shall be liable to the other for consequential, special, punitive, or incidental damages arising out of this Agreement or the Services provided hereunder.
- c. Limitation. BRI acknowledges that Employer is an agency of the Commonwealth of Kentucky and Employer has informed BRI that Employer may be prohibited by the Kentucky Constitution from limiting the liability of BRI; however, to the extent that Employer may be able effectively to agree under Kentucky law, if at all, in no event shall any liability of BRI arising out of this Agreement or the Services provided hereunder exceed an amount equal to the average monthly fees (determined under Section 5(b)) multiplied by twenty-four (24). BRI acknowledges that such limitation may be deemed unenforceable under Kentucky law.

8. Audit.

- a. General. During the Term of this Agreement, and at any time within six (6) months of the date this Agreement terminates, Employer may audit BRI's records related to the Services to determine whether BRI is complying or complied, with this Agreement. Employer may audit BRI once per 12-month period.
- b. Notice, Timing and Parameters. Employer must provide written notice of an audit no later than sixty (60) days

prior to the proposed date of the audit. The actual date of the audit shall be negotiated by BRI and Employer. Such notice shall describe the proposed scope of the audit, sample size, sampling method, duration, location, and other audit specifications, all of which are subject to agreement by BRI.

- c. Auditor. Employer may designate a third-party to perform an audit under this Section 8. However, any third-party auditor must be (i) mutually agreed to by BRI (with respect to any audits involving the HSA benefit), (ii) qualified (as evidenced by professional affiliations and standards) to perform an audit, and (iii) willing to enter into a non-disclosure and confidentiality agreement with BRI and/or Employer.
- d. Report. The auditor must present all draft findings to BRI before any audit report is issued to the Employer. If BRI disagrees with any portion of the draft findings, BRI will notify the auditor within ten (10) business days, at which time, BRI and the auditor shall enter into good faith discussions to resolve the disagreement.
- e. Expenses. All expenses related to an audit shall be borne by the Employer.

9. Miscellaneous.

- a. Amendment. This Agreement may be modified only in writing signed by all parties to the Agreement.
- b. Non-Waiver. The failure or delay by either party to enforce the terms of this Agreement shall not be deemed a waiver of such terms.
- c. Assignment and Subcontracting. This Agreement may not be assigned by either party without the prior written consent of the other party, except that BRI shall have the right to assign its rights to payment hereunder. BRI may subcontract the Services, such contracting of Services shall not diminish or limit BRI's obligations hereunder, and will not create a direct contractual relationship between Employer and BRI's subcontractor.
- d. Force Majeure. Neither party shall have any liability for delayed or deficient performance to the extent that such delay or failure is due to causes beyond the party's reasonable control.
- e. Notices. All notices permitted or required under this Agreement shall be in writing (unless electronic notice is specified), delivered by hand or mailed by certified United States mail, return receipt requested, or by a nationally recognized overnight courier, addressed as follows:

To Employer:

Teachers' Retirement System of Kentucky
479 Versailles Road
Frankfort, KY 40601

Email (for electronic notices only):

To BRI:

Attention: CFO
Benefit Resource, LLC
245 Kenneth Drive
Rochester NY 14623-4277
Email (for electronic notices only): accounting@benefitresource.com

All notices shall be effective upon receipt or upon attempted delivery where delivery is refused, or mail is unclaimed.

- f. Governing Law. This Agreement shall be governed and interpreted under the laws of the state of Kentucky without giving effect to any choice of law or conflicting provision or rule (whether of the state of Kentucky or any other jurisdiction) that would cause the laws of any jurisdiction other than the state of Kentucky to be applied.

- g. Interpretation and Entire Understanding. This Agreement, along with its Addenda, constitutes the entire Agreement between the parties hereto and supersedes all prior and contemporaneous arrangements, understandings, negotiations and discussions of the parties with respect to the Services, whether written or oral, and there are no warranties, representations, or other agreements between the parties in connection with the Services except as specifically set forth herein. The parties hereby acknowledge and agree that (i) the rule of construction providing that any ambiguities are resolved against the drafting party will not apply in interpreting this Agreement, and (ii) the Agreement will be construed fairly as to all parties hereto and not in favor of or against a party, regardless of which party was generally responsible for the preparation of this Agreement.
- h. Relationship of Parties. The parties agree that in performing their respective obligations under this Agreement, they are in the position of independent contractors. This Agreement does not create, and is not intended to create, any partnership, joint venture or similar relationship.
- i. Severability. If any provision of this Agreement is found to be unenforceable, such finding shall not affect the remaining provisions of this Agreement, each of which shall be enforced as if the unenforceable provision has been removed.
- j. Counterparts. This Agreement may be executed, delivered and transmitted as separate counterparts, each of which shall be considered an original and all of which together constitute this Agreement.

This Agreement is accepted and agreed to by the parties as of the Effective Date.

EMPLOYER

BENEFIT RESOURCE, LLC

By:

By:

Name:

Eric Wampler

Name:

Giovanna Donato-Reyes

Title:

Deputy Executive Secretary

Title:

Vice President of Sales



BENEFIT RESOURCE MASTER SERVICE AGREEMENT

FLEXIBLE SPENDING ACCOUNT ADDENDUM

This Addendum relates to the provision of Flexible Spending Account ("FSA") Services. Any capitalized term not defined in this Addendum shall be as defined in the Agreement.

This Addendum is made a part of the Agreement as of:

May 1, 2024

The term of this Addendum shall be the later of: (i) the end of the current FSA Plan Year, (ii) the term of the Master Services Agreement, or (iii) the term of any current renewal mutually agreed to by the parties.

1. FSA Services and Fees. BRI shall provide the following Services related to Employer's FSA, subject to payment of the specified fee(s):

a. Installation of FSA – billed once for all pre-tax plans Fee: \$0.00

- Coordinate FSA design with Employer.
- Initial plan documentation of FSA (as requested by Employer).
- Provision of FSA enrollment information, forms and announcement documents.
- Scheduled online web access sessions to conduct group employee meetings and roll out implementation of FSA to employees.
- Prefunding equal to 4% of total Plan Year elections must be available the first business day of the month prior to Plan Year begin date, if the Plan Year elections exceed \$25,000.

b. On-going Support of FSA Fee: \$4.00

This is a standalone rate for employees who are enrolled FSA only.

Monthly Minimum (only applies if the total FSA monthly billing is less than this amount) Fee: \$125.00

- General FSA account administration.
- Claims processing through BRI's website, mobile app, or claim form (with reimbursement of claims through direct deposit, paper check).
 - *In the event of payment in error to a plan participant, Employer acknowledges that BRI has the right to recoup payment and agrees to assist BRI in such efforts.*
- Detailed explanation of benefit statements (health FSA only).
- Provision of a Beniversal® Prepaid MasterCard® which allows participants to access FSA funds at point-of-sale from qualified merchants.
- Employer and Participant access to BRIWEB which contains FSA information, reports, forms, and account details.
 - (Note: it is the Employer's responsibility to leverage these reports & ensure terminated participants are reported to BRI in a timely manner. We bill for terminated participants through the end of the current plan year in order to process eligible claims up to their date of ineligibility).
- Participant opt-in account alerts via email or text message, including monthly balance reminders and transaction alerts (standard text message rates apply).

- Claims substantiation.
- Compliance support (e.g., FSA document amendments, Employer reference manual, Internal Revenue Code nondiscrimination testing). Fee: \$395.00

2. Additional Services and Fees. If elected by the Employer below (or at any time during the term of the agreement), BRI shall provide the following Services related to Employer's FSA, subject to payment of the specified fee(s):

- Third Party File Interface (for new enrollments, changes, terminations, and payroll deductions. Included for clients over 250 ppts). Fee: \$0.00
- Customization of reporting (ad hoc reports may require additional approval) or other FSA materials. Fee: \$250.00/hour (minimum 1 hour)
- Form 5500 Preparation (for applicable plans) Fee: \$275.00/year
- Schedule A Preparation Fee: \$25.00/schedule
- Non-standard documentation request for substantiation (charged to participant's FSA account unless otherwise arranged between BRI and Employer). Fee: \$1.00/document
- Takeover (balances only) of Run Out Period from prior TPA. Applicable if requested after implementation has been completed. Fee: \$500.00

3. Cardholder Fees. The following fees will be charged to the Employer or if applicable, the Beniversal® Prepaid MasterCard® cardholder.

- a. Additional or replacement card (e.g., in the event card is lost, stolen, damaged, or there is a participant name change - billed to plan participant). Fee: Included
- b. Expedited Card Fee (billed to plan participant) Fee: \$30.00/card

This Addendum and the terms set forth herein shall be effective as of the date entered above.

Teachers' Retirement System of Kentucky (EMPLOYER)

BENEFIT RESOURCE, LLC

By:

[Redacted Signature]

By:

[Redacted Signature]

Name: Eric Wampler

Name: Giovanna Donato-Reyes

Title: Deputy Executive Secretary

Title: Vice President of Sales



BENEFIT RESOURCE MASTER SERVICE AGREEMENT

HEALTH REIMBURSEMENT ACCOUNT ADDENDUM

This Addendum relates to the provision of Health Reimbursement Account (“HRA”) Services. Any capitalized term not defined in this Addendum shall be as defined in the Agreement.

This Addendum is made a part of the Agreement as of:

May 1, 2024

The term of this Addendum shall be the later of: (i) the end of the current HRA Plan Year, (ii) the term of the Master Services Agreement, or (iii) the term of any current renewal mutually agreed to by the parties.

1. HRA Services and Fees. BRI shall provide the following Services related to Employer’s HRA, subject to payment of the specified fee(s):

a. Installation of HRA Fee: \$0.00

- Coordinate HRA design with Employer.
- Initial plan documentation of HRA (as requested by Employer).
- Provision of HRA enrollment information, forms, and announcement documents.
- Scheduled online web access sessions to conduct group employee meetings and roll out implementation of HRA to employees.

b. On-going Support of HRA Fee: \$4.00

This is a standalone rate for employees who are enrolled HRA only.

Monthly Minimum (only applies if the total HRA monthly billing is less than this amount) Fee: \$125.00

- General HRA account administration.
- Claims processing through BRI’s website, mobile app, or claim form (with reimbursement of claims through direct deposit, paper check).
 - *In the event of payment in error to a plan participant, Employer acknowledges that BRI has the right to recoup payment and agrees to assist BRI in such efforts.*
- Detailed explanation of benefit statements.
- If applicable, Provision of a Beniversal® Prepaid MasterCard® which allows participants to access HRA funds at point-of-sale from qualified merchants.
- Employer and Participant access to BRI website which contains HRA information, reports, forms, and account details.
- Participant opt-in account alerts via email or text message, including monthly balance reminders and transaction alerts (standard text message rates apply).
- Claims substantiation.

2. Additional Services and Fees. If elected by the Employer below (or at any time during the term of the agreement), BRI shall provide the following Services related to Employer’s HRA, subject to payment of the

specified fee(s):

- Third Party File Integration (for new enrollments, changes, terminations, and payroll deductions. Included for clients over 250 ppts) Fee: \$0.00
- Customization of HRA documents or other HRA materials. Fee: \$250.00/hour
- Compliance support (e.g. HRA document amendments, Employer reference manual). Fee: \$395.00/ year
- Form 5500 Preparation (for applicable plans). Fee: \$275/year
- Non-standard documentation request (charged to participant's HRA account unless otherwise arranged between BRI and Employer). Fee: \$1.00/document
- Takeover of Run Out Period from prior TPA. (only applicable if requested after implementation has been completed). Fee: \$500.00

3. Cardholder Fees. The following fees will be charged to the applicable Beniversal® Prepaid MasterCard® cardholder's HRA account, to the extent applicable, unless otherwise arranged between BRI and Employer:

- a. Additional or replacement card (e.g., in the event card is lost, stolen, damaged, or there is a participant name change – billed to plan participant) Fee: Included
- b. Expedited Card Fee (billed to plan participant) Fee: \$30.00/card

This Addendum and the terms set forth herein shall be effective as of the date entered above.

Teachers' Retirement System of Kentucky (EMPLOYER)

BENEFIT RESOURCE, LLC

By:



By:



Name:

Eric Wampler

Name:

Giovanna Donato-Reyes

Title:

Deputy Executive Secretary

Title:

Vice President of Sales



Benefit Resource Business Associate Agreement

This Business Associate Agreement (the "Agreement") is entered into by and between Benefit Resource, LLC. and its wholly owned subsidiaries (collectively referred to as "Business Associate") and Teachers' Retirement System of Kentucky on behalf of its group health plan(s) (collectively, the "Covered Entity").

RECITALS:

WHEREAS, the Business Associate provides third-party administration services (the "Service Arrangement") pursuant to which the Covered Entity may create, access, or otherwise come in contact with Protected Health Information, as clarified by the Genetic Information Act of 2008 and applicable regulations ("PHI"), and/or the Covered Entity may disclose PHI to Business Associate, in order to enable Business Associate to perform one or more functions for the Covered Entity related to Treatment, Payment, or Health Care Operations as contemplated by the Service Arrangement; and

WHEREAS, the parties desire to comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Final Rule for Standards for Privacy of Individually Identifiable Health Information adopted by the United States Department of Health and Human Services and codified at 45 C.F.R. part 160 and part 164, subparts A & E (the "Privacy Rule"), the HIPAA Security Rule (the "Security Rule"), codified at 45 C.F.R. Part 164 Subpart C, and Subtitle D of the Health Information Technology for Economic and Clinical Health Act ("HITECH"), including C.F.R. Sections 164.308, 164.310, 164.312, 164.316, and 164.402.

NOW THEREFORE, the parties to this Agreement hereby agree as follows:

1. Definitions

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule, the Security Rule, and HITECH, including 45 C.F.R. §§ 160.103, 164.103, 164.304, 164.402, 164.501 and 164.502.

2. Obligations and Activities of Business Associate

- a. Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement, as Required by Law or as permitted by law, provided the use or disclosure would also be permissible by law if made by the Covered Entity.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Agreement. Business Associate agrees to implement Administrative Safeguards, Physical Safeguards and Technical Safeguards ("Safeguards") that reasonably and appropriately protect the confidentiality, integrity and availability of PHI as required by the Security Rule, including those safeguards required pursuant to 45 C.F.R. §§ 164.308, 164.310, 164.312, 164.314 and 164.316, in the same manner that those requirements apply to the Covered Entity pursuant to 45 C.F.R. § 164.504.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- d. Business Associate agrees to report, as soon as practicable, to the Covered Entity any use or disclosure of PHI not provided for by this Agreement, including any Breach of Unsecured PHI as required by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware, as set forth in Section 2(k). Notwithstanding the foregoing, the parties hereby agree that this Agreement shall be sufficient notification of unsuccessful Security Incidents (one or more unwanted or unexpected events that could compromise the security of information or weaken or impair business operations), including but not limited to attempted penetration of Business Associate's firewalls by viruses, hacks, pings, and other unsuccessful attacks on Business Associate's security and data infrastructure.
- e. Business Associate agrees to ensure that any agent, including a subcontractor or vendor, to whom it provides PHI received from or created by Business Associate on behalf of the Covered Entity, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information through a contractual arrangement that complies with 45 C.F.R. § 164.314. Upon request, Business Associate shall provide Covered Entity with the name and contact information for any such agent, including a subcontractor or vendor.
- f. Business Associate agrees to provide paper or electronic access, at the request of the Covered Entity and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to the Covered Entity or, as directed by the Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524. If an electronic copy of the information is requested, Business Associate must provide the Covered Entity or Individual with the information requested in the electronic form and format requested if it is readily producible in such form and format; or, if not, in paper form and format.

g. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity.

h. Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of the Covered Entity, available to the Secretary, in a time and manner designated by the Secretary, for the purposes of the Secretary determining the Covered Entity's compliance with the Privacy Rule and Security Rule.

i. Business Associate agrees to document disclosures of PHI and the information related to the disclosures that would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528.

j. Business Associate agrees to provide to the Covered Entity or an Individual, in a time and manner designated by the Covered Entity, information collected in accordance with this Agreement, to permit the Covered Entity to respond to a request by an individual for an accounting of disclosures for PHI in accordance with 45 C.F.R. §164.528.

k. If Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses Unsecured Protected Health Information (as defined in 45 C.F.R. § 164.402), it shall, as soon as practicable following the discovery of a Breach of such information, promptly notify the Covered Entity of the Breach. The notice shall include: (a) a brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known; (b) a description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved); (c) to the extent known by the Business Associate, any steps individuals should take to protect themselves from potential harm resulting from the Breach; (d) a brief description of what the Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and (e) contact procedures for individuals to ask questions or learn additional information about the Breach. In an effort to provide notice as expeditiously as possible, Business Associate may elect to provide notice telephonically prior to issuing a written notice. Business Associate shall reasonably cooperate with the Covered Entity with respect to investigation a Breach and satisfying the Covered Entity's Breach-related obligations.

l. Business Associate agrees that it will not receive remuneration directly or indirectly in exchange for PHI without authorization unless an exception under 13405(d) of the HITECH Act applies.

m. Business Associate agrees that it will not receive remuneration for certain communications that fall within the exceptions to the definition of Marketing under 45 C.F.R. § 164.501 unless permitted by the HITECH Act.

n. Business Associate agrees that it will not use or disclose genetic information for underwriting purposes, as that term is defined in 45 C.F.R. § 164.502.

3. Permitted Uses and Disclosures by Business Associate

a. Except as otherwise limited in this Agreement, Business Associate may only use or disclose PHI to perform functions, activities, or services for, or on behalf of, the Covered Entity as specified in the Service Arrangement, provided that the use or disclosure would not violate the Privacy Rule if done by the Covered Entity or the minimum necessary policies and procedures of the Covered Entity required by 45 C.F.R. §164.514(d). Further, Business Associate will only disclose PHI to its representatives who need to know such information for purposes thereof and who are advised of their obligations to (i) keep such information confidential in accordance herewith, and (ii) not use any such information for any purpose except to enable Business Associate to perform under the Service Arrangement.

b. Except as otherwise limited in this Agreement, Business Associate or any of its representatives may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate. In addition, Business Associate may disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided such disclosures are Required By Law, or if Business Associate obtains reasonable assurances from the person to whom PHI will be disclosed that it will remain confidential and used or further disclosed only as Required By Law or the purpose for which it was disclosed to the person (and further, that the person will notify Business Associate of any Breach).

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

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

4. Obligations of the Covered Entity

a. The Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that the limitation may affect Business Associate's use or disclosure of PHI.

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

c. The Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that the restriction may affect Business Associate's use or disclosure of PHI. Otherwise, Covered Entity agrees that it will not furnish or impose by

arrangements with third parties or other covered entities or business associates special limits or restrictions to the uses and disclosures of its PHI that may impact in any manner the use and disclosure of PHI by Business Associate.

5. Permissible Requests by the Covered Entity

The Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity.

6. Compliance with Electronic Transactions Rule

If Business Associate conducts in whole or part Electronic Transactions on behalf of the Covered Entity for which the Department of Health and Human Services has established standards, Business Associate will comply, and will require any subcontractor, vendor, or agent it involves with the conduct of Electronic Transactions to comply, with each applicable requirement of the Electronic Transactions Rule at 45 C.F.R. Part 162. Business Associate shall also comply with the National Provider Identifier requirements, if and to the extent applicable.

7. Term and Termination

a. The term of this Agreement shall begin as of the effective date of the Service Arrangement and shall terminate when all of the PHI provided by the Covered Entity to Business Associate, or created or received by Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to the information, in accordance with the termination provisions of this Section.

b. Upon either party's knowledge of a material breach by the other party, the non-breaching party shall either:

i. Provide an opportunity for the breaching party to cure the breach or end the violation and terminate this Agreement and the Service Agreement if the breaching party does not cure the breach or end the violation within a reasonable time specified by the non-breaching party, or

ii. Immediately terminate this Agreement and the Service Arrangement if the breaching party has breached a material term of this Agreement and cure is not possible.

c. Except as provided in paragraph (d) of this Section, upon any termination or expiration of this Agreement, Business Associate shall return or destroy all PHI received from the Covered Entity, or created or received by Business Associate on behalf of the Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors, vendors, or agents of Business Associate. Business Associate shall retain no copies of the PHI. Business Associate shall ensure that its agents, subcontractors or vendors return or destroy any of Covered Entity's PHI received from Business Associate. Notwithstanding the foregoing, Business Associate may retain PHI to the extent required by law, which information shall be held on a confidential basis pursuant to the terms hereof. Upon Covered Entity's request, Business Associate shall promptly certify in writing as to its compliance with this paragraph.

d. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. In such case, Business Associate shall extend the protections of this Agreement to the PHI and limit further uses and disclosures of the PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains the PHI.

8. Miscellaneous

a. A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.

b. The Parties agree to take actions that are necessary to amend this Agreement from time to time as is necessary for the Covered Entity to comply with the requirements of HIPAA, the Privacy and Security Rules and HITECH.

c. The respective rights and obligations of Business Associate under Section 7 (c) and (d) of this Agreement shall survive the termination of this Agreement.

d. Any ambiguity in this Agreement shall be resolved to permit the Covered Entity to comply with HIPAA and HITECH.

e. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than the Covered Entity, Business Associate and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.

f. Modification of the terms of this Agreement shall not be effective or binding upon the parties unless and until the modification is committed to writing and executed by the parties hereto.

g. This Agreement shall be binding upon the parties hereto, and their respective legal representatives, trustees, receivers, successors and permitted assigns.

h. Should any provision of this Agreement be found unenforceable, it shall be deemed severable and the balance of the Agreement shall continue in full force and effect as if the unenforceable provision had never been made a part hereof.

i. This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance.

j. All notices and communications required or permitted to be given hereunder shall be sent by certified or regular mail, addressed to the other party at its respective address as shown on the signature page, or at another address that the party shall from time to time designate in writing to the other party, and shall be effective from the date

of mailing.

This Agreement, including the portions that are incorporated by reference herein, constitutes the entire agreement by, between and among the parties, and the parties acknowledge by their signature hereto that they do not rely upon any representations or undertakings by any person or party, past or future, not expressly set forth in writing herein.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

For the Employer:

For Benefit Resource, LLC.:

By:



Name:

Eric Wampler

Title:

Deputy Executive
Secretary

By:



Name:

Giovanna Donato-Reyes

Title:

Vice President of Sales