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# **Bank of Travelers Rest**

## *ADMINISTRATIVE SERVICE AGREEMENT*

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*ADOPTED FROM*  
**BANK OF TRAVELERS REST**  
*EFFECTIVE JANUARY 1, 2021*

## **ADMINISTRATIVE SERVICES AGREEMENT**

This Administrative Services Agreement is entered into by and between Bank of Travelers Rest, (Client) a/an SC corporation with its principal place of business located at 42 Plaza Drive, Travelers Rest, SC 29690 considered the Plan Sponsor under BTR HRA and Benefit Coordinators, Inc. a SC corporation with its principal place of business located at PO Box 197, Irmo, SC 29063, referred to in this document as Plan Service Provider.

Bank of Travelers Rest has requested Benefit Coordinators, Inc. to act as its agent when paying plan benefits and furnishing plan services.

Bank of Travelers Rest and Benefit Coordinators, Inc. agree to the provisions as set forth in this agreement.

### **PLAN**

As used in this agreement, plan means the partially self-funded welfare benefit plan set forth in Bank of Travelers Rest's BTR HRA Plan Document (Exhibit A).

### **EFFECTIVE DATE**

The effective date of this agreement is January 1, 2021.

### **PLAN BENEFITS UNDER THIS AGREEMENT**

The plan benefits subject to this agreement are detailed in Bank of Travelers Rest's Health Insurance Plan as incorporated through the provisions in Bank of Travelers Rest's BTR HRA Plan Document.

### **RESPONSIBILITIES OF PLAN SPONSOR**

Bank of Travelers Rest retains the final authority and responsibility for the plan and its operation. Bank of Travelers Rest gives Benefit Coordinators, Inc. the authority to act on behalf of Bank of Travelers Rest in connection with the plan, but only as expressly stated in this agreement or as mutually agreed in writing by Bank of Travelers Rest and Benefit Coordinators, Inc..

Bank of Travelers Rest will perform the following tasks:

- Review with counsel and adopt the BTR HRA Plan prior to the plan effective date.
- Report plan changes, additions, and terminations on a timely basis.
- Distribute checks to employees.
- Distribute various other reports to employees.
- Upon notice, take action required to bring the plan into compliance if the plan becomes discriminatory.

- Copy and distribute Summary Plan Description and SBCs to participants.
- Ensure compliance with Section 105 Non-Discrimination requirements.

Bank of Travelers Rest will also:

- Pay Benefit Coordinators, Inc. fees as set forth in this agreement.
- Provide funds for the payment of plan benefits as set forth in this agreement.
- Furnish the information needed by Benefit Coordinators, Inc. to perform its functions under this agreement. Information regarding the plan includes any information concerning the eligibility and entitlement of persons to receive plan benefits.
- Indemnify Benefit Coordinators, Inc. and save it harmless from and against all loss, damage, expense or other obligation resulting from or arising out of claims, demands, or lawsuits against Benefit Coordinators, Inc. in connection with benefit payments or services performed under this agreement.
- Indemnify Benefit Coordinators, Inc. and save Benefit Coordinators, Inc. harmless against any liability, expenses demand, or other obligation resulting from or arising out of any tax or similar assessment (federal or state) which: (a) Benefit Coordinators, Inc. may incur with respect to plan benefits which are the obligation and liability of Bank of Travelers Rest; or (b) would have been levied on any charges or fees payable by Bank of Travelers Rest to Benefit Coordinators, Inc. under this agreement.
- Review Appeals of benefit denials as required by ERISA.

#### **RESPONSIBILITIES OF PLAN SERVICE PROVIDER**

Benefit Coordinators, Inc. will provide consultation services to Bank of Travelers Rest regarding plan analysis and design features, initially and in connection with plan revisions. Service and assistance will include:

- Estimates of initial plan costs,
- Cost projections of any proposed plan revisions, and
- Advice regarding the preparation of Summary Plan Descriptions.

Benefit Coordinators, Inc., as agent of Bank of Travelers Rest, will also:

- Process plan benefits in its usual and customary manner subject to and in accordance with this agreement to or on behalf of plan participants (persons entitled to receive plan benefits);
- Notify any plan participant denied plan benefits of the reasons for the denial and the plan participant's right to have the denial reviewed. The notification will be in a manner agreed upon by Bank of Travelers Rest and Benefit Coordinators, Inc.. Bank of Travelers Rest is responsible for the review of any appealed benefit denial; and
- Maintain, for the duration of this agreement, adequate records of all transactions between Bank of Travelers Rest, Benefit Coordinators, Inc. and plan participants.

These records will be the property of Bank of Travelers Rest, even though Benefit Coordinators, Inc. will store these records throughout the plan year. After the grace period of the following year, Company will present the files to Bank of Travelers Rest for archival. Bank of Travelers Rest should archive these records for an additional two years or a total of three years after the applicable plan year.

Benefit Coordinators, Inc. will refer to Bank of Travelers Rest for determination, any:

- Claim or class of claims specified by Bank of Travelers Rest;
- Disputed claim,
- Claim involving any question of eligibility or entitlement of the claimant for plan coverage,
- Questions about amount of payment due; or
- Other questions.

Benefit Coordinators, Inc. will furnish Bank of Travelers Rest the following items:

- Administrative forms needed for the performance of Bank of Travelers Rest's duties under this agreement; and
- Administrative reports during the plan year.

Benefit Coordinators, Inc. will indemnify Bank of Travelers Rest with respect to this agreement resulting from or arising out of the gross negligence or the dishonest, fraudulent or criminal acts of Benefit Coordinators, Inc. or its employees, acting alone or in collusion with others.

### **PLAN BENEFIT PAYMENTS**

Bank of Travelers Rest authorizes Benefit Coordinators, Inc. to prepare checks or initiate EFTs to pay for plan benefits. The funds for claims to be drawn from a bank account of Bank of Travelers Rest's general assets.

### **BANK OF TRAVELERS REST'S LIABILITY**

Benefit Coordinators, Inc. does not insure nor underwrite the liability of Bank of Travelers Rest under the plan. Bank of Travelers Rest retains the ultimate responsibility for claims made under the plan. Bank of Travelers Rest is responsible for all expenses incident to the plan except expenses specifically assumed by Benefit Coordinators, Inc. in this agreement.

### **BENEFIT COORDINATORS, INC.'S LIABILITY**

Benefit Coordinators, Inc. will use reasonable care and due diligence in the exercise of its powers in the performance of its duties under this agreement. Benefit Coordinators, Inc. will not be liable for any mistake of judgment or other actions taken in good faith. In the event Benefit Coordinators, Inc. makes an incorrect payment under this agreement which is a result of the failure of Benefit Coordinators, Inc. to exercise reasonable care in making the payment (such as, clerical error in the issuance of a draft), Benefit Coordinators, Inc. will make a diligent effort to recover any incorrect excess payment made. Benefit Coordinators, Inc. is not required to institute any court proceedings.

### **BENEFIT COORDINATORS, INC.'S COMPENSATION**

For Benefit Coordinators, Inc. services provided under this agreement, Bank of Travelers Rest will pay Benefit Coordinators, Inc. the charges described as follows:

- An initial plan setup fee of \$0 (WAIVED) is due and payable on the effective date of this agreement.
- A monthly maintenance fee as determined by multiplying the number of employees covered by the Plan on the first day of each month during this agreement's continuance by \$ 4.75. The monthly maintenance charge is due and payable on the first day of each month during the continuance of this agreement. There is a minimum monthly fee of \$300.00.
- A base annual fee of \$0 (WAIVED) is due and payable on the plan anniversary date each year.
- The above covers normal administration and services outlined in this agreement. Additional services would be billed at \$100.00 per hourly if authorized by Bank of Travelers Rest in writing.

Benefit Coordinators, Inc. has the right to change the fee rates. Benefit Coordinators, Inc. will give Bank of Travelers Rest written notice of the change. The notice will state the new rates and the effective date of the new rate. The notice will be made no less than thirty (30) days before the effective date of the change. The fee rates in use at the time of the notice must be in effect at least twelve (12) months before a change can be made. Benefit Coordinators, Inc. also reserves the right to change the monthly maintenance fees either on the date:

- a change is made in the plan, or
- the number of employees covered by the plan has changed by twenty-five percent (25%) or more since the date the current charges became effective.

A grace period of thirty (30) days without interest will be allowed for the payment of every charge due and payable after the effective date. This subsection does not apply to the initial charge. Failure of Bank of Travelers Rest to pay any charge within the grace period will result in this agreement's termination at the end of the grace period. Nevertheless, Bank of Travelers Rest will be liable to Benefit Coordinators, Inc. for charges due and unpaid on the termination date.

### **SEVERABILITY**

If any provision of this agreement is held invalid by law or by a court of law, the invalidity will not affect any other provision of this agreement. This agreement's provisions are severable. It is provided, however, that the basic purposes of this agreement must be achieved through the remaining valid provisions.

### **LIMITATIONS OF CAPTIONS AND HEADINGS**

The captions and headings throughout this agreement are for convenience and reference only. The words of the captions and headings will in no way be held or deemed to define, describe, explain, modify or limit the meaning of any provision, or the scope or the intent of this agreement.

### **TRADEMARKS AND SYMBOLS**

Bank of Travelers Rest and Benefit Coordinators, Inc. agree not to use words, symbols, trademarks, service marks or other devices including the corporate name of the other in advertising, promotional materials or otherwise without the prior written consent of the other. Bank of Travelers Rest and Benefit Coordinators, Inc. will cease any previously approved usage immediately upon termination of the agreement.

### **CONTRACT COMPLIANCE-NONWAIVER**

Failure by Bank of Travelers Rest, Benefit Coordinators, Inc. or both to insist upon compliance with any term or provision of this agreement at any time or under any set of circumstances will not waive or modify that provision or render it unenforceable at any other time whether or not the circumstances are the same. No waiver of any of the terms or provisions of this agreement will be valid or of any force or effect unless in each instance the waiver or modification is contained in a written memorandum expressing such alteration or modification and executed by the Bank of Travelers Rest and Benefit Coordinators, Inc..

### **ASSIGNMENT AND AMENDMENTS**

Any assignment of this agreement or of any rights contained herein will be void and of no force or effect. This agreement may be amended at any time by written agreement between Bank of Travelers Rest and Benefit Coordinators, Inc..

### **TERMINATION**

This agreement may be terminated either by Bank of Travelers Rest or by Benefit Coordinators, Inc. at any time if the terminating party gives the other party prior written notice. The written notice will state the effective date of the termination and will be given no less than thirty (30) days before the date of the termination.

This agreement will terminate automatically and immediately as of the date:

- Bank of Travelers Rest fails to pay any fees within thirty (30) days after charges are due and payable as provided in this agreement,
- Bank of Travelers Rest fails to perform its obligations regarding plan benefit payments in accordance with this agreement. Termination will not relieve Bank of Travelers Rest of its obligation to reimburse Benefit Coordinators, Inc. for payment of plan benefits or any fees due and payable,
- Bank of Travelers Rest amends the plan regarding plan benefits subject to this agreement without prior written acknowledgment of Benefit Coordinators, Inc.,
- The plan or the plan benefits subject to this agreement are terminated , or
- Bank of Travelers Rest becomes insolvent or bankrupt or subject to liquidation, receivership, or conservatorship.

If the plan or the plan benefits subject to this agreement are terminated, Bank of Travelers Rest and Benefit Coordinators, Inc. may mutually agree that this agreement's provisions will continue

in effect for the purposes of payment of plan benefit expense claims incurred before the termination date but not paid on or before the termination date.

If this agreement is terminated while the plan continues in effect, Bank of Travelers Rest and Benefit Coordinators, Inc. may mutually agree that this agreement's provisions will continue in effect solely for the purpose of payment of any claims for which EOBs have been received by Benefit Coordinators, Inc. before the termination date.

If provisions of this agreement are continued in effect in accordance with either of the above two paragraphs, Bank of Travelers Rest and Benefit Coordinators, Inc. will mutually determine an appropriate charge to be paid by Bank of Travelers Rest to Benefit Coordinators, Inc. during the period this agreement's provisions are continued.

IN WITNESS WHEREOF, Bank of Travelers Rest and Benefit Coordinators, Inc. have caused this agreement to be executed in their names by their undersigned officers, the same being duly authorized to do so.

**Benefit Coordinators, Inc.**

**Bank of Travelers Rest**

\_\_\_\_\_

\_\_\_\_\_

By: Ashley Milbourne

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

Title: Plan Service Provider

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX****Business Associate Agreement**

**Bank of Travelers Rest “CLIENT”** has entered into an agreement with Benefit Coordinators, Inc. “BCI” for third party administration and other related services specifically set forth in the Administrative Services Agreement to which this Business Associate Agreement is attached; and

**BCI** acknowledges that it is a “Business Associate” of CLIENT as those terms are defined by the Health Insurance Portability and Accountability Act and its implementing regulations (45 C.F.R. Parts 160-164) (“HIPAA”).

**In Consideration** of the mutual covenants and conditions contained in this Agreement, the parties agree as follows:

- 1. Definitions.** Capitalized terms in this Agreement and not otherwise defined herein shall have the meanings set forth in HIPAA and the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH Act”), which definitions are hereby incorporated by reference.
- 2. Obligations and Activities of BCI.**
  - 2.1.** BCI agrees to use or disclose Protected Health Information (“PHI”) received from or on behalf of “CLIENT” or created for “CLIENT” only as permitted or required by this Agreement, as required by law, or for BCI’S internal management and compliance purposes.
  - 2.2.** BCI agrees to develop, implement, maintain and use appropriate administrative, technical, and physical safeguards to protect the privacy of the PHI other than as provided for by this Agreement. The safeguards must reasonably protect PHI from any intentional or unintentional use or disclosure in violation of the Privacy Rule and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Agreement.
  - 2.3.** BCI agrees to comply with the Security Rule and will use appropriate administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI that BCI creates, receives, maintains, or transmits on “CLIENT”’s behalf. “CLIENT” will also implement the technologies and methodologies used to render the electronic PHI that it creates, receives, maintains, or transmits on behalf of “CLIENT” unusable, unreadable, or indecipherable to unauthorized individuals as required by the HITECH Act and the Department of Health and Human Services (“HHS”).
  - 2.4.** BCI agrees to mitigate, to the extent practicable, any harmful effect that is known to BCI of a use or disclosure of PHI by BCI in violation of the requirements of this Agreement.
  - 2.5.** BCI agrees to report to “CLIENT”, any use or disclosure of PHI not provided for by this Agreement of which it becomes aware not more than thirty (30) calendar days after BCI discovers such non-permitted use or disclosure.
  - 2.6.** BCI agrees to report to “CLIENT” the aggregate number of unsuccessful, unauthorized attempts to access, use, disclose, modify, or destroy electronic PHI or to interfere with system operations in an



information system containing electronic PHI. Such reports will be provided once per month, on or before the 10<sup>th</sup> calendar day of such month. BCI will report to "CLIENT" any successful unauthorized access, use, disclosure, modification, or destruction of electronic PHI or any successful interference with system operations in an information system containing electronic PHI, in writing, as soon as feasible.

- 2.7.** BCI agrees to provide notification to "CLIENT" of any potential Breach of Unsecured PHI no later than thirty (30) days after the discovery of such potential Breach by BCI, unless a delay is allowed under applicable law. Breach is defined as the unauthorized acquisition, access, use or disclosure of PHI which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. BCI shall treat a potential Breach as being discovered in accordance with 45 CFR § 164.410. The notification shall consist of the following: (i) A brief description of the breach, including the date of the breach and the date of discovery; (ii) Identify the types of PHI that were involved in the breach; (iii) Identify who made the non-permitted use or disclosure and who received it; (iv) Identify what corrective action has been taken; and (v) Provide such other information, including a written report and risk assessment under 45 CFR § 164.402, as "CLIENT" may request.
- 2.8.** BCI agrees to ensure that any agent, including a subcontractor, to whom it provides PHI, received from, or created or received by BCI on behalf of "CLIENT", agrees to the same restrictions and conditions that apply through this Agreement to BCI with respect to such information. Moreover, BCI shall ensure that any such agency or subcontractor agrees to implement reasonable and appropriate safeguards to protect the member's PHI.
- 2.9.** BCI agrees to provide access, at the written request of "CLIENT", and in the time and manner mutually agreed by the parties or designated by the Secretary, to PHI in a Designated Record Set in BCI's custody or control, to "CLIENT" or, as directed by "CLIENT", to an Individual or the Individual's designee, in order to meet the requirements under 45 C.F.R. § 164.524. Effective September 23, 2013, if "CLIENT" requests an electronic copy of PHI that is maintained electronically in a Designated Record Set in BCI'S custody or control, BCI will provide an electronic copy in the form and format specified by "CLIENT" if it is readily producible in such format; if it is not readily producible, BCI will work with "CLIENT" to determine an alternative form and format that enable "CLIENT" to meet its electronic access obligations under 45 CFR § 164.524.
- 2.10.** BCI 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. § 162.526 at the request of "CLIENT" or an Individual, and in the time and manner mutually agreed by the parties or designated by the Secretary.
- 2.11.** BCI agrees not to receive, directly or indirectly, remuneration in exchange for any PHI of an Individual unless "CLIENT" received valid authorization from the Individual or unless an exception under HIPAA or the HITECH Act applies.
- 2.12.** BCI agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by BCI on behalf of "CLIENT", available to "CLIENT", or to the Secretary, in a time and manner mutually agreed by the parties or designated by the Secretary, for purposes of the Secretary determining "CLIENT"'s compliance with the Security and Privacy Rules.

- 2.13.** BCI agrees to document such disclosures of PHI and information related to such disclosures as would be required for "CLIENT" to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- 2.14.** BCI agrees to provide to "CLIENT" or an Individual member, in a time and manner mutually acceptable to the parties, information collected in accordance with this Agreement, to permit "CLIENT" to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- 2.15.** In the event that BCI transmits or receives any Covered Electronic Transactions on behalf of "CLIENT", it shall comply with all applicable provisions of the Standards for Electronic Transactions Rule to the extent required by law, and shall ensure that any agents that assist BCI in conducting Covered Electronic Transactions on behalf of "CLIENT" agree in writing to comply with the Standards for Electronic Transactions Rule to the extent required by law.
- 3. Permitted Uses and Disclosures by BCI.** Except as otherwise limited in this Agreement, BCI may use or disclose PHI to perform functions, activities, or services for, or on behalf of "CLIENT", provided that such use or disclosure would not violate the Security and Privacy Rules if done by "CLIENT" including the minimum necessary requirements thereto.
- 3.1.** Except as otherwise limited in this Agreement, BCI may use PHI for the proper management and administration of BCI or to carry out the legal responsibilities of BCI.
- 3.2.** Except as otherwise limited in this Agreement, BCI may use or disclose PHI to perform functions, activities, or securities for, or on behalf of "CLIENT" as specified in the Administrative Services Agreement to which this Business Associate Agreement is attached, provided that such use or disclosure would not violate the Security and Privacy Rules if done by "CLIENT", or the minimum necessary policies and procedures of the Covered Entity.
- 3.3.** Except as otherwise limited in this Agreement, BCI may use PHI to provide administrative services to "CLIENT" as permitted by 45 C.F.R. § 164.504(e)(2)(i)(A).
- 3.4.** Except as otherwise limited in this Agreement, BCI may disclose PHI for the proper management and administration of BCI, provided that disclosures are Required by Law, or BCI obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies BCI of any instances of which it is aware in which the confidentiality of the information has been breached.
- 3.5.** Except as otherwise limited in this Agreement, BCI may use PHI to provide Data Aggregation services to "CLIENT" as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- 3.6.** BCI 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 "CLIENT".** Upon request, "CLIENT" shall provide BCI with a copy of its Notice of Privacy Practices and Restrictions:

- 4.1.** "CLIENT" shall notify BCI of any limitations in the Notice of Privacy Practices of "CLIENT" in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect BCI'S use or disclosure of PHI.
- 4.2.** "CLIENT" shall notify BCI of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect BCI'S use or disclosure of PHI.
- 4.3.** "CLIENT" shall notify BCI of any restriction to the use or disclosure of PHI that "CLIENT" has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect BCI's use or disclosure of PHI.

**5. Permissible Requests by "CLIENT".** Except as otherwise permitted by this Agreement, "CLIENT" shall not request BCI to use or disclose PHI in any manner that would not be permissible under the Security and Privacy Rules if done by "CLIENT", except that BCI may use or disclose PHI for Data Aggregation, or management and administrative activities of BCI as further specified herein and in the Administrative Services Agreement to which this Business Associate Agreement is attached.

**6. Term and Termination.**

**6.1. Term.** The Term of this Agreement shall be effective upon execution of this Agreement by both parties, and shall terminate when all of the PHI provided by "CLIENT" to BCI, or created or received by BCI on behalf of "CLIENT", is destroyed or returned to "CLIENT" or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

**6.2. Termination for Cause.** Upon "CLIENT"'s knowledge of a material breach of any provision of this Agreement by BCI, "CLIENT" shall either:

- 6.2.1.** Provide an opportunity for BCI to cure the breach or end the violation and terminate this Agreement if BCI does not cure the breach or end the violation within the time specified by "CLIENT";
- 6.2.2.** Immediately terminate this Agreement if BCI has breached a material term of this Agreement and cure is not possible; or
- 6.2.3.** If neither termination nor cure is feasible, "CLIENT" shall report the violation to the Secretary.

**6.3. Effect of Termination.**

**6.3.1.** Except as provided in the following paragraph, upon termination of this Agreement, for any reason, BCI shall return or destroy all PHI received from "CLIENT", or created or received by BCI on behalf of "CLIENT". This provision shall apply to PHI that is in the possession of subcontractors or agents of BCI. BCI shall retain no copies of the PHI.

**6.3.2.** In the event that BCI determines that returning or destroying the PHI is infeasible, BCI shall provide to "CLIENT" notification of the conditions that make return or destruction infeasible. BCI shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as BCI maintains such PHI.

## **7. Legal Actions.**

**7.1. Response to Subpoenas.** In the event that BCI receives a subpoena (or similar notice or request) from any judicial, administrative or other party arising out of or in connection with this Agreement, including, but not limited to, any unauthorized use or disclosure of PHI or any failure in BCI's security measures, "CLIENT" shall promptly forward a copy of such subpoena "CLIENT" and afford "CLIENT" the opportunity to be a part of the decision making with regard to the subpoena including but not limited to responding to the subpoena.

### **7.2. Indemnity.**

**7.2.1.** BCI will indemnify and hold harmless "CLIENT" and any member affiliate, trustee, officer, director, employee, volunteer or agent from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any unauthorized use or disclosure of PHI or any failure in security measures affecting PHI or any other breach of the terms of this Agreement by BCI or any person or entity under BCI's control.

**7.2.2.** "CLIENT" will indemnify and hold harmless BCI and any BCI affiliate, trustee, officer, director, employee, volunteer or agent from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any unauthorized use or disclosure of PHI or any failure in security measures affecting PHI or any other breach of the terms of this Agreement by "CLIENT" or any person or entity under "CLIENT"'s control.

### **7.3. Right to Tender or Undertake Defense.**

**7.3.1.** If "CLIENT" is named a party in any judicial, administrative or other proceeding arising out of or in connection with any unauthorized use or disclosure of PHI or any failure in BCI's security or privacy measures affecting PHI, electronic PHI, or any other breach of the terms of this Agreement by (1) BCI, (2) any person or entity under BCI's control, or (3) its subcontractors or agents, "CLIENT" will have the option at any time either (1) to tender their defense to BCI, in which case BCI will provide qualified attorneys to represent "CLIENT"'s interests at BCI's expense, or (2) undertake their own defense, choosing the attorneys, consultants and other appropriate professionals to represent their interests, in which case BCI will be responsible for and pay the reasonable fees and expenses of such attorneys, consultants and other professionals.

**7.3.2.** If BCI is named a party in any judicial, administrative or other proceeding arising out of or in connection with any unauthorized use or disclosure of PHI or any failure in "CLIENT"'s security or

privacy measures affecting PHI, electronic PHI, or any other breach of the terms of this Agreement by (1) "CLIENT", (2) any person or entity under "CLIENT"'s control, or (3) "CLIENT"'s subcontractors or agents, BCI will have the option at any time either (1) to tender its defense to "CLIENT", in which case "CLIENT" will provide qualified attorneys to represent BCI's interests at "CLIENT"'s expense, or (2) undertake its own defense, choosing the attorneys, consultants and other appropriate professionals to represent its interests, in which case "CLIENT" will be responsible for and pay the reasonable fees and expenses of such attorneys, consultants and other professionals.

**7.4. Right to Control Resolution.** "CLIENT" will have the sole right and discretion to settle, compromise or otherwise resolve any and all claims, causes of actions, liabilities or damages against them, notwithstanding that "CLIENT" may have tendered their defense to BCI. Any such resolution shall not relieve BCI of its obligation to indemnify "CLIENT".

## **8. General Provisions.**

**8.1. Regulatory References.** A reference in this Agreement to a section in the Security and Privacy Rules means the section as in effect or as amended.

**8.2. Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for "CLIENT" to comply with the requirements of the Security and Privacy Rules, HIPAA and the HITECH Act.

**8.3. Survival.** The respective rights and obligations of BCI under this Agreement shall survive the termination of this Agreement.

**8.4. Interpretation.** Any ambiguity in this Agreement shall be resolved to permit "CLIENT" to comply with the Security and Privacy Rules.

**8.5. No Third-Parties.** Nothing express or implied in this Agreement is intended to confer, nor shall anything in this Agreement confer, upon any person or entity other than the parties and their respective successors or assigns any rights, remedies, obligations, or liabilities whatsoever.

**8.6. Conflicts.** To the extent that the law of the state in which "CLIENT" does business is more stringent than Federal law regarding privacy issues, the law of such state shall control, unless such state law is preempted by the Federal law.

**8.7. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one binding agreement.