2010-139
10/007171

**BOARD OF COUNTY COMMISSIONERS**
**SARPY COUNTY, NEBRASKA**

**RESOLUTION APPROVING AGREEMENT WITH TWO RIVERS INSURANCE COMPANY, INC. d/b/a EMPLOYEE BENEFIT SYSTEMS FOR THE PURPOSE OF ESTABLISHING PARTIAL SELF FUNDING FOR HEALTH INSURANCE**

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 2007), the County has the power to do all acts in relation to the concerns of the county necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, the County of Sarpy desires to renew its agreement with Two Rivers Insurance Company, Inc., d/b/a Employee Benefit Systems for the purpose of establishing responsibility, rights and obligations relating to partial self-funding for health insurance, as outlined in the agreement attached hereto as Exhibit A; and,

WHEREAS, said attached renewal agreement is for unique, non-competitive and professional services and is in the best interests of the citizens of Sarpy County; and,

NOW, THEREFORE, BE IT RESOLVED by the Sarpy County Board of Commissioners that this Board hereby approves and adopts the renewal agreement with Two Rivers Insurance Company, Inc., d/b/a Employee Benefit Systems, a copy of which is attached.

BE IT FURTHER RESOLVED that the Chairman of this Board, together with the County Clerk, is hereby authorized to sign on behalf of this Board the renewal agreement with Two Rivers Insurance Company, Inc., d/b/a Employee Benefit Systems, copies of which are attached, and any other related documents, the same being approved by the Board.

DATED this 11th day of May, 2010.

Moved by Rusty Hike, seconded by Rick Jansen, that the above Resolution be adopted. Carried.

| YEAS: | NAYS: | ABSENT: |
|---|---|---|
| Rusty Hike | none | none |
| Rick Jansen | | |
| Tom Jones | | ABSTAIN: |
| Tom Richard | | none |
| Patricia J. Thomas | | |

DEBRA J. NOUGHTALING, COUNTY CLERK SEAL SARPY COUNTY, NEBRASKA

Debra Noughtaling
County Clerk

Approved as to form:

Deputy County Attorney

EBS

# PSF Renewal

**EBS System Data**

| | |
|---|---|
| Client Number: | 49130 |
| Plan Year: | 7/1/2010-6/30/2011 |
| Services: | PSF only |

## A) Plan Sponsor – All Information is required for Renewal Groups

| | | | | | |
|---|---|---|---|---|---|
| Group Name: | Sarpy County | | | Tax ID: | 47-6006504 |
| Address: | 1210 Golden Gate Drive Papillion, NE 68046-2895 | | | | |
| Telephone: | 402-593-4487 | Facsimile | 402-593-4360 | Website: | |
| Contact: | Linda Welles | Title: | Sr. Admin Personnel | Email: | lwelles@sarpy.com |
| Agency: | William-Deras | Address: | 302 S 36th St. Suite 105 Omaha, NE | | |
| Agent: | Mike Williams/Stephanie Dow | Phone: | 402-398-9898 x3 | Email: | steph@williamsderas.com |

## B) PSF Plan Information

**PLEASE ATTACH PLAN SUMMARY FROM CARRIER**

**PRIMARY PLAN (EMPLOYER PLAN)**

Carrier: BCBS- NE

| | In-Network | | Non-Network | |
|---|---|---|---|---|
| | *Single* | *Family* | *Single* | *Family* |
| Deductible: | $3000 | $6000 | $3000 | $6000 |
| Out-of-Pocket maximum (OPM): | $3450 | $6900 | $3450 | $6900 |
| Co-insurance: | 70/30 | | 50/50 | |
| Deductible included in OPM: | | | | |

Co-pay: OV = $ 30-60 ER = $ 100 Wellness = $ _____ Supl Accd = $ _____

Drug Program: $10/40/60

**REIMBURSEMENT PLAN (EMPLOYEE PLAN)**

| | In-Network | | Non-Network | |
|---|---|---|---|---|
| | *Single* | *Family* | *Single* | *Family* |
| Deductible: | $500 | $1000 | $N/A | $N/A |
| Out-of-Pocket maximum (OPM): | $1500 | $3000 | $N/A | $N/A |
| Co-insurance: | 70/30 | | | |
| Deductible included in OPM: | | | | |

Co-pay: OV = $ 30-60 ER = $ 100 Wellness = $ _____ Supl Accd = $ _____

Drug Program: $10/40/60

| | |
|---|---|
| Maximum dollar exposure to the employer per member, in-network: | $1950/3900 |
| Maximum dollar exposure to the employer per member, non-network: | $N/A |

## D) Fees

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| PSF Admin | $6.50 | EOB Fee | $ | Billing Admin | $ | COBRA Admin | $ |
| Flex Admin | $ | HRA Admin | $ | Dental Admin | $ | Vision Admin | $ |
| | | | | Broker Fee | $ | **Total Fees (pepm):** | $6.50 |

## E) Plan Confirmation

**EBS shall be entitled to rely on information furnished by the Client, Agent, or Broker regarding group set-up, renewal and implementation. The Client, Agent, or Broker will furnish EBS with such other information as EBS may reasonably require in the performance of its duties hereunder. In the case of inaccurate information provided to EBS, EBS will only go back sixty (60) days for reprocessing of claims and EBS will not be held responsible for claims under or overpaid prior to that period.**

**Signature:** Joni Jones **Date:** 5/11/2010

**Print Name:** Joni Jones

# EMPLOYEE BENEFIT SYSTEMS
# THIRD PARTY ADMINISTRATION SERVICE AGREEMENT

THIS AGREEMENT effective July 1, 2010 is made by and between Sarpy County ("Client"), an Nebraska corporation, and Employee Benefit Systems ("Administrator"), an Iowa corporation.

WHEREAS, the Client desires to retain the Administrator to provide certain Administrative services on behalf of the Client;

WHEREAS, the Administrator agrees to provide these certain Administrative services on behalf of Client;

NOW THEREFORE, in consideration of these promises and the mutual promises set forth in this Agreement, the parties hereby agree as follows:

## 1. APPOINTMENT.

The Client appoints the Administrator to provide administrative services, subject to the terms and conditions of this Agreement. The Administrator shall have only such authority as granted expressly by this Agreement. The Administrator shall not have any authority to make any agreement binding upon Client.

## 2. COMPLIANCE WITH LAWS.

The Administrator agrees that it will comply with all laws, statutes, rules and regulations. Except as authorized in writing by Client, Administrator shall not disclose to any person, institution, or company not authorized by Client any information directly or indirectly related to Employees and shall not reveal any individually identifiable medical information, in accordance with the Health Insurance Portability & Accountability Act (HIPAA) privacy and security regulations, without first receiving authorization from the individual involved.

## 3. BOND.

Administrator shall maintain a Fidelity bond for protection against fraud or dishonesty on the part of any employee of the Administrator in an amount to comply with Employee Retirement Income Security Act (ERISA) guidelines for this size plan.

## 4. INSURANCE.

Administrator shall obtain and maintain general, E&O liability insurance and other insurance necessary or appropriate to insure its ability to comply with all applicable regulations.

## 5. INDEPENDENT CONTRACTOR.

The relationship between Client and Administrator is intended to be that of independent contractors. Nothing in this Agreement shall be construed to create any partnership, joint venture or agency or employment relationship of any kind between Client and Administrator or any employee or agent.

## 6. STATUS OF ADMINISTRATOR.

Administrator hereby represents and warrants that neither Administrator nor, to the best of its knowledge, its employees or subcontractors have been charged with a criminal offense.

## 7. LICENSES.

Administrator represents and warrants that it possesses the necessary licenses from regulatory authorities to perform its duties under this Agreement and that it is a corporation duly organized and existing and in good standing under the laws of the State of Nebraska.

## 8. RECORDS.

All records in the possession of the Administrator shall be kept by the Administrator for the periods required by law. Client may audit during regular business hours any and all records of Administrator pertaining to claims or premiums paid on behalf of Client's plan participants.

## 9. CONFIDENTIALITY.

During the course of performance under and during the "fact finding process", each party will obtain or have access to certain proprietary information. Each party acknowledges that all such material is offered on a proprietary basis, for the sole purpose of enhancing this Agreement and will only be used as necessary to carry out the terms and conditions of this Agreement.

## 10. COMPENSATION.

Client shall pay Administrator an administrative fee, as described in Addendum A to this Agreement, as the sole compensation for the performance under this Agreement. Such fee shall be in full satisfaction of all services performed pursuant to this agreement. In consideration of a monthly administration fee (as outlined in Addendum A), Administrator agrees to provide claims payment, administrative and enrollment services for the Client. These services shall include but not be limited to the processing and payment or denial of claims, monthly and yearly reporting of the financial and quality indicators and claims data, file 1099-Med forms to the IRS and provide copies to the provider, and perform other services as necessary to administer Client's benefit plan.

All benefits will be paid with the care, skill, diligence and impartiality normally expected of a third-party administrator in the insurance industry.

All forms, materials and computerized checks used by Administrator will be provided at Administrator's expense. Booklet printing charges are not contemplated under this agreement and will be separately contracted for as necessary.

## 11. FINANCIAL REQUIREMENTS.

Client shall adequately fund a checking account, which shall be used exclusively for maintaining reserve funds, payment of Client's claims, premiums and monthly administration fees and other expenses. Client will be responsible for any monthly checking account service charges relating to this account. The funding of the checking account (timing and amount) will be the responsibility of the Client. Administrator will not pre-fund any claim or premium payments. Neither Administrator nor its officers shall be liable to pre-fund any of the costs outlined above in this section, including but not limited to claim payments, premiums, cost or administration costs. Administrator will not be liable for any claims resulting from a group's termination due to lack of adequate funding to Administrator.

## 12. CLIENT RESPONSIBILITIES.

Client shall provide a method of notification to Administrator detailing the eligibility of new members enrolled and those persons that are no longer eligible for the benefit. In the absence of notification (of termination or loss of benefit coverage), eligibility for payment of the claim or other benefit will continue.

Client hereby authorizes Administrator to draw checks, drafts or other instruments for the payment of Benefits associated with the processing of Benefits in accordance with the terms and conditions of the Plan and this agreement against any account maintained and designated by Client for this purpose.

In the event of delayed filing of subrogation or similar claims by any party, including by any Government agency, Client will retain responsibility for all benefits payable under the Health Care Plan in effect at the time the loss is incurred. Administrator shall handle any such matters in a timely manner. If Client has retained another Administrator when such an event happens, Administrator shall provide any information it may have related to the matter as soon as possible.

## 13. CLAIMS APPEALS.

Administrator shall refer to Client or its designee, for final determination, any claim for benefits or coverage that is appealed after initial rejection by the Administrator or any class of claims the Client may specify, including: (a) any question of eligibility or entitlement of the claimant for coverage under the Plan; (b) any question with respect to the amount due; or (c) any other appeal.

## 14. TERM & TERMINATION.

a. **Term.** The initial term of this Agreement shall be for one (1) year. This Agreement shall renew automatically each year unless either party gives notice of termination to the other party at least sixty (60) days prior to beginning of any term.

b. **Termination.** This Agreement shall terminate:

a. By mutual agreement of the parties;
b. By either party, if, after giving written notice of any material breach, the breaching party fails to correct such breach within 30 days of receipt of such written notice.
c. Post Termination Duties. The parties shall have no duties upon termination of this Agreement except to settle their accounts, including payment of any indebtedness and, to carry out any residual obligations which arose while this agreement was in force. Administrator can and will offer to process any run-out claims for a fee agreed upon by both parties.

## 15. INDEMNIFICATION.

Each party shall defend, indemnify, and hold the other party or any of its directors, officers or employees harmless from and against all costs, claims, expense, demands, actions, suits or proceedings, liabilities and damages (including, but not limited to, attorney's fees) directly or indirectly arising out of or resulting from any act or omission of the indemnifying party that occurred in the performance of its duties under this Agreement.

## 16. GENERAL PROVISIONS

a) Administrator agrees to provide at least 60 days notice prior to future fee increases and to limit such increases to once in a 12-month period. The fee thereafter shall be based on each month's count of participating employees. For fee calculation purpose, Plan participants on Leave of Absence, early retirement and COBRA extensions will be included as employees. Administrator will bill the group monthly for the administration fee.
b) Entire Contract – This agreement supersedes any and all previous contracts, stipulations and agreements, written or oral.
c) Applicable Law - This Agreement shall be deemed to be an Iowa contract, and shall be construed and governed by the laws of such state.

| **Employee Benefit Systems** | **Sarpy County** |
|---|---|
| Mark Lehman | |
| **Mark Lehman, CFO** | **Authorized Signature & Title** |
| 7/27/10 | 5/11/2010 |
| **DATE** | **DATE** |

**AGREEMENT BETWEEN**
**EMPLOYEE BENEFIT SYSTEMS AND**
**SARPY COUNTY**

**ADDENDUM (A)**
**FEE SCHEDULE EFFECTIVE JULY 1, 2010**
**(per employee per month)**

| | | |
|---|---|---|
| Partial Self Funding Administration | PEPM | $ 6.50 or $75.00 minimum |

**Employee Benefit Systems**

Mark Lehman

**Mark Lehman, CFO**

7/27/10

**DATE**

**Sarpy County**

Tom Jones

**Authorized Signature & Title**

5/11/2010

**DATE**

## BUSINESS ASSOCIATE ADDENDUM

1. **PREAMBLE**

Sarpy County ("Covered Entity") and Employee Benefit Systems ("Business Associate") (jointly "the Parties") wish to modify the Administrative Services Agreement ("Agreement") to incorporate the terms of this Addendum to comply with the requirements of: (i) the implementing regulations at 45 C.F.R Parts 160, 162, and 164 for the Administrative Simplification provisions of Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (*i.e.*, the HIPAA Privacy Rule, the HIPAA Security Standards, and the HIPAA Standards for Electronic Transactions (collectively referred to in this Addendum as "the HIPAA Regulations")), and (ii) the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the "HITECH Act") that are applicable to business associates, along with any guidance and/or regulations issued by the U.S. Department of Health and Human Services ("DHHS") as of September 2009. Covered Entity and Business Associate agree to incorporate into this Addendum any regulations issued by DHHS with respect to the HITECH Act that relate to the obligations of business associates and that are required to be (or should be) reflected in a business associate agreement. Business Associate recognizes and agrees that it is obligated by law to meet the applicable provisions of the HITECH Act.

2. **DEFINITIONS**

(a) "*Electronic PHI*" shall mean protected health information that is transmitted or maintained in any electronic media, as this term is defined in 45 C.F.R. § 160.103.

(b) *Limited Data Set*" shall mean protected health information that excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individual:

(i) Names;

(ii) Postal address information, other than town or city, State, and zip code;

(iii) Telephone numbers;

(iv) Fax numbers;

(v) Electronic mail addresses;

(vi) Social security numbers;

(vii) Medical record numbers;

(viii) Health plan beneficiary numbers;

(ix) Account numbers;

(x) Certificate/license numbers;

(xi) Vehicle identifiers and serial numbers, including license plate numbers

(xii) Device identifiers and serial numbers;

(xiii) Web Universal Resource Locators (URLs);

(xiv) Internet Protocol (IP) addresses numbers;

(xv) Biometric identifiers, including finger and voice prints; and

(xvi) Full face photographic images and any comparable images.

(c) "*Protected Health Information*" or "*PHI*" shall mean information created or received by a health care provider, health plan, employer, or health care clearinghouse, that: (i) relates to the past, present, or future physical or mental health or condition of an individual, provision of health care to the individual, or the past, present, or future payment for provision of health care to the individual; (ii) identifies the individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the individual; and (iii) is transmitted or maintained in an electronic medium, or in any other form or medium. The use of the term "Protected Health Information" or "PHI" in this Addendum shall mean both Electronic PHI and non-electronic PHI, unless another meaning is clearly specified.

(d) "*Security Incident*" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

(e) All other terms used in this Addendum shall have the meanings set forth in the applicable definitions under the HIPAA Regulations and/or the security and privacy provisions of the HITECH Act that are applicable to business associates along with any regulations issued by the DHHS.

3. **GENERAL TERMS**

(a) In the event of an inconsistency between the provisions of this Addendum and a mandatory term of the HIPAA Regulations (as these terms may be expressly amended from time to time by the DHHS or as a result of interpretations by DHHS, a court, or another regulatory agency with authority over the Parties), the interpretation of DHHS, such court or regulatory agency shall prevail. In the event of a conflict among the interpretations of these entities, the conflict shall be resolved in accordance with rules of precedence.

(b) Where provisions of this Addendum are different from those mandated by the HIPAA Regulations or the HITECH Act, but are nonetheless permitted by the Regulations or the Act, the provisions of this Addendum shall control.

(c) Except as expressly provided in the HIPAA Regulations, the HITECH Act, or this Addendum, this Addendum does not create any rights in third parties.

4. **SPECIFIC REQUIREMENTS**

(a) <u>Privacy of Protected Health Information</u>

(i) *Permitted Uses and Disclosures of PHI.* Business Associate agrees to create, receive, use, or disclose PHI only in a manner that is consistent with this Addendum or the HIPAA Privacy Rule and only in connection with providing the services to Covered Entity identified in the Agreement. Accordingly, in providing services to or for the Covered Entity, Business Associate, for

example, will be permitted to use and disclose PHI for "treatment, payment, and health care operations" in accordance with the HIPAA Privacy Rule.

(1) Business Associate shall report to Covered Entity any use or disclosure of PHI that is not provided for in this Addendum.

(2) Business Associate shall maintain safeguards as necessary to ensure that PHI is not used or disclosed except as provided for by this Addendum.

(ii) *Business Associate Obligations.* As permitted by the HIPAA Privacy Rule, Business Associate also may use or disclose PHI received by the Business Associate in its capacity as a Business Associate to the Covered Entity for Business Associate's own operations if:

(1) the *use* relates to: (1) the proper management and administration of the Business Associate or to carry out legal responsibilities of the Business Associate, or (2) data aggregation services relating to the health care operations of the Covered Entity; or

(2) the *disclosure* of information received in such capacity will be made in connection with a function, responsibility, or services to be performed by the Business Associate, and such disclosure is required by law or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidential and the person agrees to notify the Business Associate of any breaches of confidentiality.

(iii) *Minimum Necessary Standard and Creation of Limited Data Set.* Business Associate's use, disclosure, or request of PHI shall utilize a Limited Data Set if practicable. Otherwise, in performing the functions and activities as specified in the Agreement and this Addendum, Business Associate agrees to use, disclose, or request only the minimum necessary PHI to accomplish the intended purpose of the use, disclosure, or request.

(iv) *Access.* In accordance with 45 C.F.R. § 164.524 of the HIPAA Privacy Rule and, where applicable, in accordance with the HITECH Act, Business Associate will make available to those individuals who are subjects of PHI, their PHI in Designated Record Sets by providing the PHI to Covered Entity (who then will share the PHI with the individual), by forwarding the PHI directly to the individual, or by making the PHI available to such individual at a reasonable time and at a reasonable location. Business Associate shall make such information available in an electronic format where directed by the Covered Entity.

(v) *Disclosure Accounting.* Business Associate shall make available the information necessary to provide an accounting of disclosures of PHI as provided for in 45 C.F.R. § 164.528 of the HIPAA Privacy Rule, and where so required by the HITECH Act and/or any accompanying regulations, Business Associate shall make such information available directly to the individual. Business Associate further shall provide any additional information to the extent required by the HITECH Act and any accompanying regulations.

Business Associate is not required to record disclosure information or otherwise account for disclosures of PHI that this Addendum or the Agreement in writing permits or requires: (i) for the purpose of payment activities or health care operations (except where such recording or accounting is required by the HITECH Act, and as of the effective dates for this provision of the HITECH Act), (ii) to the individual who is the subject of the PHI disclosed, or to that individual's personal representative; (iii) to persons involved in that individual's health care or payment for health care; (iv) for notification for disaster relief purposes, (v) for national security or intelligence purposes, (vi) to law enforcement officials or correctional institutions regarding inmates; (vii) pursuant to an authorization; (viii) for disclosures of certain PHI made as part of a limited data set; and (ix) for certain incidental disclosures that may occur where reasonable safeguards have been implemented.

(vi) *Amendment.* Business Associate shall make available PHI for amendment and incorporate any amendment to PHI in accordance with 45 C.F.R. § 164.526 of the HIPAA Privacy Rule.

(vii) *Right to Request Restrictions on the Disclosure of PHI and Confidential Communications.* If an individual submits a Request for Restriction or Request for Confidential Communications to the Business Associate, Business Associate and Covered Entity agree that Business Associate, on behalf of Covered Entity, will evaluate and respond to these requests according to Business Associate's own procedures for such requests.

(viii) *Return or Destruction of PHI.* Upon the termination or expiration of the Agreement or this Addendum, Business Associate agrees to return the PHI to Covered Entity, destroy the PHI (and retain no copies), or further protect the PHI if Business Associate determines that return or destruction is not feasible.

(ix) *Availability of Books and Records.* Business Associate shall make available to DHHS or its agents the Business Associate's internal practices, books, and records relating to the use and disclosure of PHI in connection with this Addendum.

(x) *Termination for Breach.*

(1) Business Associate agrees that Covered Entity shall have the right to terminate this Addendum or seek other remedies if Business Associate violates a material term of this Addendum.

(2) Covered Entity agrees that Business Associate shall have the right to terminate this Addendum or seek other remedies if Covered Entity violates a material term of this Addendum.

(b) <u>Information and Security Standards</u>

(i) Business Associate will develop, document, implement, maintain, and use appropriate administrative, technical, and physical safeguards to preserve the integrity, confidentiality, and availability of, and to prevent nonpermitted use or disclosure of, PHI created or received for or from the Covered Entity.

(ii) Business Associate agrees that with respect to PHI, these safeguards, at a minimum, shall meet the requirements of the HIPAA Security Standards applicable to Business Associate.

(iii) More specifically, to comply with the HIPAA Security Standards for PHI, Business Associate agrees that it shall:

(1) Implement administrative, physical, and technical safeguards consistent with (and as required by) the HIPAA Security Standards that reasonably protect the confidentiality, integrity, and availability of PHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity. Business Associate shall develop and implement policies and procedures that meet the Security Standards documentation requirements as required by the HITECH Act.

(2) As also provided for in Section 4(d) below, ensure that any agent, including a subcontractor, to whom it provides such PHI agrees to implement reasonable and appropriate safeguards to protect it;

(3) Report to Covered Entity, Security Incidents of which Business Associate becomes aware that result in the unauthorized access, use, disclosure, modification, or destruction of the Covered Entity's PHI, (hereinafter referred to as "Successful Security Incidents"). Business Associate shall report Successful Security Incidents to Covered Entity as specified in Section 4(e);

(4) For any other Security Incidents that do not result in unauthorized access, use, disclosure, modification, or destruction of PHI (including, for purposes of example and not for purposes of limitation, pings on Business Associate's firewall, port scans, attempts to log onto a system or enter a database with an invalid password or username, denial-of-service attacks that do not result in the system being taken off-line, or malware such as worms or viruses) (hereinafter "Unsuccessful Security Incidents"), Business Associate shall aggregate the data and, upon the Covered Entity's written request, report to the Covered Entity in accordance with the reporting requirements identified in Section 4(e);

(5) Take all commercially reasonable steps to mitigate, to the extent practicable, any harmful effect that is known to Business Associate resulting from a Security Incident;

(6) Permit termination of this Addendum if the Covered Entity determines that Business Associate has violated a material term of this Addendum with respect to Business Associate's security obligations and Business Associate is unable to cure the violation; and

(7) Upon Covered Entity's request, Business Associate will provide Covered Entity with access to and copies of documentation regarding Business Associate's safeguards for PHI.

(c) Compliance with HIPAA Transaction Standards

(i) *Application of HIPAA Transaction Standards.* Business Associate will conduct Standard Transactions consistent with 45 C.F.R. Part 162 for or on behalf of the Covered Entity to the extent such Standard Transactions are required in the course of Business Associate's performing services under the Agreement and this Addendum for the Covered Entity. As provided for in Section 4(d) below, Business Associate will require any agent or subcontractor involved with the conduct of such Standard Transactions to comply with each applicable requirement of 45 C.F.R. Part 162. Further, Business Associate will not enter into, or permit its agents or subcontractors to enter into, any trading partner agreement in connection with the conduct of Standard Transactions for or on behalf of the Covered Entity that:

(1) Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;

(2) Adds any data element or segment to the maximum defined data set;

(3) Uses any code or data element that is marked "not used" in the Standard Transaction's implementation specification or is not in the Standard Transaction's implementation specification; or

(4) Changes the meaning or intent of the Standard Transaction's implementation specification.

(ii) *Specific Communications.* Business Associate and Covered Entity recognize and agree that communications between the parties that are required to meet the Standards for Electronic Transactions will meet the Standards set by that regulation. Communications between the Business Associate and the Covered Entity do not need to comply with the HIPAA Standards for Electronic Transactions. Accordingly, unless agreed otherwise by the Parties in writing, all communications (if any) for purposes of "enrollment" as that term is defined in 45 C.F.R. Part 162, Subpart O or for "Health Covered Entity Premium Payment Data," as that term is defined in 45 C.F.R. Part 162, Subpart Q, shall be conducted between the Business Associate or the Covered Entity. For all such communications (and any other communications), shall use such forms, tape formats, or electronic formats as Business Associate may approve.

(iii) *Communications Between the Business Associate and the Covered Entity.* All communications between the Business Associate and the Covered Entity that are required to meet the HIPAA Standards for Electronic Transactions shall do so. For any other communications between the Business Associate and the Covered Entity, the Covered Entity shall use such forms, tape formats, or electronic formats as Business Associate may approve. The Covered Entity will include all information reasonably required by Business Associate to affect such data exchanges or notifications.

(d) Agents and Subcontractors. Business Associate shall include in all contracts with its agents or subcontractors, if such contracts involve the disclosure of PHI to the

agents or subcontractors, the same restrictions and conditions on the use, disclosure, and security of such PHI that are set forth in this Addendum.

(e) Breach of Privacy or Security Obligations.

(i) *Notice and Reporting to Covered Entity.* Business Associate will notify and report to Covered Entity (in the manner and within the timeframes described below) any use or disclosure of PHI not permitted by this Addendum, by applicable law, or permitted in writing by Covered Entity.

(ii) *Notice to Covered Entity.* Business Associate will notify Covered Entity following discovery and without unreasonable delay but in no event later than ten (10) calendar days following discovery, any "Breach" of "Unsecured Protected Health Information" as these terms are defined by the HITECH Act and any implementing regulations. Business Associate shall cooperate with Covered Entity in investigating the Breach and in meeting the Covered Entity's obligations under the HITECH Act and any other security breach notification laws. Business Associate shall follow its notification to the Covered Entity with a report that meets the requirements outlined immediately below.

(iii) *Reporting to Covered Entity.*

(1) For Successful Security Incidents and any other use or disclosure of PHI that is not permitted by this Addendum, the Agreement, by applicable law, or without the prior written approval of the Covered Entity, Business Associate – without unreasonable delay and in no event later than thirty (30) days after Business Associate learns of such non-permitted use or disclosure – shall provide Covered Entity a report that will:

a. Identify (if known) each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed during such Breach;

b. Identify the nature of the non-permitted access, use, or disclosure including the date of the incident and the date of discovery;

c. Identify the PHI accessed, used, or disclosed (*e.g.,* name; social security number; date of birth);

d. Identify who made the non-permitted access, use, or received the non-permitted disclosure;

e. Identify what corrective action Business Associate took or will take to prevent further non-permitted accesses, uses, or disclosures;

f. Identify what Business Associate did or will do to mitigate any deleterious effect of the non-permitted access, use, or disclosure; and

g. Provide such other information, including a written report, as the Covered Entity may reasonably request.

(2) For Unsuccessful Security Incidents, Business Associate shall provide Covered Entity, upon its written request, a report that: (i) identifies the categories of Unsuccessful Security Incidents as described in Section

4(b)(iii)(4); (ii) indicates whether Business Associate believes its current defensive security measures are adequate to address all Unsuccessful Security Incidents, given the scope and nature of such attempts; and (iii) if the security measures are not adequate, the measures Business Associate will implement to address the security inadequacies.

(iv) *Termination for Breach.*

(1) Covered Entity and Business Associate each will have the right to terminate this Addendum if the other party has engaged in a pattern of activity or practice that constitutes a material breach or violation of Business Associate's or the Covered Entity's respective obligations regarding PHI under this Addendum and, on notice of such material breach or violation from the Covered Entity or Business Associate, fails to take reasonable steps to cure the material breach or end the violation.

(2) If Business Associate or the Covered Entity fail to cure the material breach or end the violation after the other party's notice, the Covered Entity or Business Associate (as applicable) may terminate this Addendum by providing Business Associate or the Covered Entity written notice of termination, stating the uncured material breach or violation that provides the basis for the termination and specifying the effective date of the termination. Such termination shall be effective 60 days from this termination notice.

(v) *Continuing Privacy and Security Obligations.* Business Associate's and the Covered Entity's obligation to protect the privacy and security of the PHI it created, received, maintained, or transmitted in connection with services to be provided under the Agreement and this Addendum will be continuous and survive termination, cancellation, expiration, or other conclusion of this Addendum or the Agreement. Business Associate's other obligations and rights, and the Covered Entity's obligations and rights upon termination, cancellation, expiration, or other conclusion of this Addendum, are those set forth in this Addendum and/or the Agreement.

**Amendment.** The parties agree that this Addendum may be amended by mutual agreement of the parties, in writing. In the event an amendment to this Addendum is required by modifications to the HIPAA Privacy Rule, EBS may unilaterally amend this Addendum to comply with the HIPAA Privacy Rule, and the Plan shall be bound by such amendment.

Employee Benefit Systems

By: Mark Lehman
Mark Lehman

Title: Chief Financial Officer

Date: 7/27/10

Sarpy County

By: Tom Jones
Authorized Group Signature

Title: Chairman, County Board

Date: 5/11/2010