

RESOLUTION NO. 2020-222

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO ACCEPT THE QUOTE AND ENTER INTO AN AGREEMENT WITH MEDICAL COST CONTAINMENT SERVICES D/B/A MEDCOM BENEFIT SOLUTIONS (MEDCOM) TO PROVIDE ADMINISTRATIVE SERVICES ASSOCIATED WITH THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985 (COBRA).

RECITALS:

WHEREAS, MFB, Inc., the County's medical insurance broker, conducted a market analysis for administrative services for the County's compliance with the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA); and

WHEREAS, at the January 16, 2020 meeting of the St. Johns County Insurance Committee the results of the analysis were presented with Medical Cost Containment Services (Medcom) as the number one ranked firm; and

WHEREAS, the Committee acknowledged the recommendation from the broker and the Insurance Work Group to expand the existing administrative services agreement with Medcom to include COBRA compliance, retroactively effect on May 1, 2020; and

WHEREAS, the County has reviewed the terms, provisions, conditions and requirements of the proposed agreement (attached hereto, an incorporated herein) and finds that entering into agreement to provide the services serves a public purpose.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County, Florida, as follows:

Section 1. The above recitals are incorporated into the body of this Resolution and such Recitals are adopted as findings of fact.

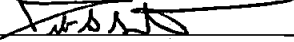
Section 2. The County Administrator, or designee, is hereby authorized to execute an agreement with Medical Cost Containment Services together with all required supplemental documents necessary to provide COBRA compliance administrative services, retroactively effective on May 1, 2020.

Section 3. The County Administrator, or designee is further authorized to execute any amendments, applications, or supplements to the agreement, which that are administrative in nature, and do not change any material terms of the agreement.

Section 4. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County,
State of Florida, this 16 Day of June 2020.

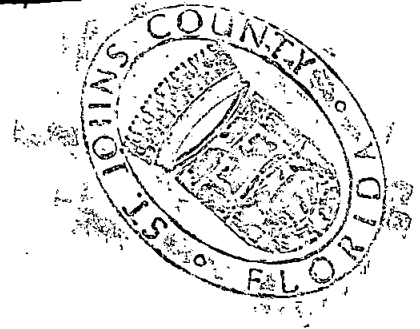
**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**

By: 
Jeb S. Smith, Chair

ATTEST: Brandon Patty

RENDITION DATE 6/18/20

By: 
Deputy Clerk



**St. Johns County
COBRA Administration Analysis Effective 4/1/2020**

	AmeriFlex	Medcom	American Benefits Group	Infinisource	PlanSource
	Current	Option 1	Option 2	Option 3	Option 4
COBRA Services					
Implementation Timeline	20 days	60 days	60 days	30 days	60 days
Online Payment Options	Included	Included	Included	Included	\$20 one-time fee
Employer Web Portal	Included	Included	Included	Included	Included
Qualified Beneficiary Web Portal	Included	Included	Included	Included	Included
Open Enrollment Materials (Printed)	\$15 per notice; \$50 min.	\$9 per notice plus postage	\$10 per notice plus postage	\$12 per notice/ \$60 minimum	*Additional Fee
Compliance Support	Included	*\$5.00 per notice	Included	Included	Included
Qualifying Event Notices	Included	Included	Included	Included	Included
COBRA Initial Notice	Included	Included	Included	Included	Included
Severance/Subsidies	Included	Included	Included	Included	Included
Electronic File Transfers	Included	Included	Included	Included	Included
Employer Reporting	Included	Included	Included	Included	Included
Rate Information					
Per Participant Per Month	\$0.45	\$0.45	\$0.45	\$0.47	\$0.65
COBRA Initial Notice	\$0.00	\$0.00	\$0.00	\$3.25	\$0.00
Monthly Premium*	\$886.05	\$886.05	\$886.05	\$925.43	\$1,279.85
Total Annual Premium	\$10,632.60	\$10,632.60	\$10,632.60	\$11,105.16	\$15,358.20
Additional Fees					
Set-Up Fee**	\$0.00	Waived	\$100.00	Waived	\$0.00
Implementation Fee	\$0.00	Waived	\$0.00	Waived	\$1,000.00
Renewal Fee	\$0.00	Waived	\$100.00	Waived	\$0.00
Takeover Fee	\$0.00	\$0.00	\$10.00 per Qualified Beneficiary;	\$0.00	\$0.00
Additional Fees	\$0.00	\$0.00	\$0.00	\$0.00	*Mass General Notice to all employees \$2.50 Per Notice
Rate Guarantee	9/1/2020	4/1/2023	4/1/2023	4/1/2023	**4/1/2023

*Regulatory Compliance Notice \$5.00/notice – this would apply if regulations changed and required COBRA participants and/or qualified beneficiaries to receive an additional notice not currently required by COBRA.

*Initial Notice cost \$1,901.25 based on 2019 count

**Standard contract is 3 years with a yearly 5% rate increase

*Premiums based on 1,969 active employee participants on Medical.

**A one-time Plan Source file feed setup charge of up to \$2,600 for St. Johns County and \$2,000 for St. Johns County Sheriff's Office may apply (St. Johns County: \$500 – COBRA Initial Rights, \$1,500 – COBRA Qualifying Event, \$150 x 4 to duplicate the original file across the other 4 St. Johns County divisions; St. Johns County Sheriff's Office: \$500 – COBRA Initial Rights, \$1,500 – COBRA Qualifying Event).

COBRA Service Agreement

Between:

St. Johns County Board of County Commission
Benefit Plan Sponsor

and

Medcom Benefit Solutions
COBRA Service Provider

Effective On:
05/01/2020

COBRA ADMINISTRATIVE SERVICES AGREEMENT

THIS AGREEMENT (hereinafter referred to as the "Agreement") is made effective 05/01/2020 ("Effective Date") by and between Medcom Benefit Solutions ("Administrator"), a Florida corporation, and St. Johns County Board of County Commission (hereinafter referred to as the "Plan Sponsor") that sponsors an employee group health plan.

WHEREAS, the Plan Sponsor is responsible for the administration of its employee health plan (Hereinafter referred to as the "Plan"); and

WHEREAS, the Plan Sponsor desires to retain Medcom Benefit Solutions and Medcom Benefit Solutions desires to accept such appointment to provide administrative services for the Plan related to assisting the Plan Sponsor in complying with certain requirements of the Internal Revenue Code of 1986, as amended ("The Code") and the Employee Retirement Income Security Act of 1974 ("ERISA") that pertain to continuation of health benefits coverage regulated by Consolidated Omnibus Budget Reconciliation Act of 1985 as amended ("COBRA") and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA");

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein, Medcom Benefit Solutions and the Plan Sponsor agree upon the following terms and conditions:

1. **Services to Be Performed.** The Plan Sponsor hereby contracts with Medcom Benefit Solutions to provide the following COBRA and HIPAA administrative services:
 - a. Send the following notices to Principal Qualified Beneficiaries by first class mail:
 - i. Eligibility Notice (Employee, Spouse, or Dependent) – Election Form to Qualified Beneficiary.
 - ii. Initial notice advising employee and any dependents newly enrolled in active plan of their COBRA rights.
 - b. Communicate with Principal Qualified Beneficiary in accordance with COBRA and HIPAA legislation.
 - c. Accounting for Premium Payments, Collection Services and reports.
 - i. Confirmation of Payments (entered into system).
 - ii. Monthly Premium Receipts Report.
 - iii. Qualified Beneficiaries Premium Collection and Reporting.
 - iv. Monthly Lump Sum Transmittal of Collected Premiums.
 - d. Report to Plan Sponsor on a weekly or as needed basis all new COBRA enrollees (those who have elected to continue coverage) and all terminations (for those whose continuation coverage ends due to non payment of premium or expiration of coverage duration period).
 - e. Provide COBRA administration forms for Plan Sponsor. The forms are the property of Medcom Benefit Solutions and may only be copied for Plan Sponsors internal use and may not be

communicated, given or otherwise transferred to any other person, corporation or entity.

- f. Adjudication and Customer Service.
 - i. Full adjudication of notices and payments.
 - ii. Professional, Personalized Customer Service.
- g. On-line web access to maintain qualified beneficiaries and reports

2. **Effective Date: Term and Termination.** This Agreement shall be effective on the date stated above as the Effective Date and shall continue in effect for an initial one-year term. This Agreement shall automatically renew for successive one year terms unless canceled by either party, upon notice given in accordance with paragraph 9, at least thirty (30) days prior to the expiration of the then current term or otherwise in accordance with this agreement, or for a stated extended period by mutual agreement of the parties as hereinafter provided. The Plan Sponsor may terminate this Agreement at any time by giving Medcom Benefit Solutions written notice of the termination of the Agreement at least sixty (60) days prior to the date of termination specified in such notice.

3. **Relationship of Parties.** Plan Sponsor and Medcom Benefit Solutions are separate and independent entities. The relationship between them is purely contractual, and neither is an agent, employee or servant of the other. As independent contracting parties, the Plan Sponsor and Medcom Benefit Solutions maintain separate and independent management and they each have full authority and responsibility regarding their own organization, method of operation and structure. Except as may be otherwise expressly provided herein, neither party shall have the right or authority to assume or create any obligation, express or implied, on behalf of the other party.

Plan Sponsor understands that Medcom Benefit Solutions is not the Plan Administrator of the Plan for purposes of ERISA or a fiduciary as defined under ERISA. Medcom Benefit Solutions shall provide only administrative and ministerial services to the Plan under this Agreement and shall not exercise any discretionary authority or control with respect to the Plan.

Plan Sponsor has independently concluded that one or more of its benefit plans that provide medical care are subject to the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985.

4. **Responsibilities of Plan Sponsor.** In providing the services described in the COBRA Administration Fee Schedule Medcom Benefit Solutions shall rely upon the Plan Sponsor to do the following:

- a. Provide complete and accurate information regarding plans, rates and current COBRA participants and all data requested on the set up forms.
- b. Determine and accurately report, on a timely basis, the occurrence of qualifying events for Plan participants who become eligible for COBRA. Use the form titled Employer Notice: Qualifying Event provided in the Employers Guide. Or other "acceptable" written notification to include all of the information requested on the Employer Notice: Qualifying Event form.
- c. Review the reports provided by Medcom Benefit Solutions and advise of any discrepancies in such reports within thirty (30) days after receipt.
- d. Use written forms of communication in relaying information to Medcom Benefit Solutions.
- e. Maintain compliance of all Plans subject to COBRA as amended, including notification requirements and maintenance of all related forms, letters, and documents.

5. **Indemnification and Hold Harmless.** In performing the benefits administrative services provided under this Agreement, Medcom Benefit Solutions may rely without qualification on the information provided by

Plan Sponsor. Medcom Benefit Solutions shall not be responsible for the consequences of any action taken or omitted by the Plan Sponsor or Plan Administrator in connection with the administration of the Plan, including but not limited to incomplete or inaccurate information and/or the failure of the Plan Sponsor to act or supply information on a timely basis. The Plan Sponsor shall indemnify and hold harmless Medcom Benefit Solutions, its officers, directors, employees, shareholders, successors and assigns, from and against any and all liabilities, claims, costs, demands, expenses or loss including but not limited to reasonable attorney's fees and other costs of litigation whether suit be instituted or not, at pretrial, trial and appellate levels resulting from or attributable to any action or omission by the Plan Sponsor, except to the extent that such action or omission is the result of the Plan Sponsor's reasonable reliance on Medcom Benefit Solutions to provide the services specified in this agreement. Medcom Benefit Solutions shall indemnify and hold harmless the Plan Sponsor from any claim, expense or liability including but not limited to reasonable attorney's fees and other costs of litigation, incurred by the Plan Sponsor as a consequence of any such reasonable reliance on the services of Medcom Benefit Solutions.

6. **Department of Labor Model Notice.** Plan Sponsor acknowledges receipt of the enclosed Initial Notice of COBRA rights, (Department of Labor Model Notice) required under COBRA. If the Plan Sponsor has not contracted with Medcom Benefit Solutions to perform the Initial Notification Service, Plan Sponsor shall be responsible and takes full legal responsibility and liability to distribute this initial notice properly per the requirements by The Code section 4980B(f)(6)(A). Medcom Benefit Solutions shall have no liability or responsibility for compliance with this portion of the law unless specifically contracted for under this agreement and described in the *COBRA Administration Fee Schedule*.
7. **Sample COBRA Letters.** An Employer Guide is available online and has the sample texts of letters that will be sent by Medcom Benefit Solutions to Qualified Beneficiaries of the Plan Sponsor. The Plan Sponsor agrees that the text of each letter is satisfactory.

Medcom Benefit Solutions accepts responsibility for compliance to COBRA regulations for the text of the enclosed standard set of letters. The Plan Sponsor will provide any modifications to the text of any letter to Medcom Benefit Solutions. The responsibility for letter text, if modified, is that of the Plan Sponsor.

8. **Compensation To Medcom Benefit Solutions:** Medcom Benefit Solutions shall be compensated for providing Administrative services specified in this agreement and described under COBRA Administration Fee Schedule. Compensation is due forty-five (45) days from the day the bill is rendered. Administrative fees change, in which case Medcom Benefit Solutions must notify the Plan Sponsor in writing thirty (30) days prior to the annual renewal date, except for additional administrative services and/or expenses requested by the Plan and agreed to by Medcom Benefit Solutions.
 - A. If Plan Sponsor does not pay any service fee due to Medcom Benefit Solutions hereunder within forty-five (45) days from the day that the bill is rendered, Medcom Benefit Solutions may suspend and/or cancel its services hereunder until payment is made. In the event Medcom Benefit Solutions suspends its services because of Plan Sponsor's failure to pay the service fee described in the COBRA Administration Fee Schedule within forty-five (45) days from the due date, Medcom Benefit Solutions shall have no liability or responsibility for any claims, taxes or liabilities incurred by Plan Sponsor or the employees of the Plan Sponsor as a result of such suspension. The Plan Sponsor agrees to pay all collection costs, including but not limited to Attorney fees and court costs, that are necessary to collect any unpaid service fee balance and to reimburse Medcom Benefit Solutions for sums expended on behalf of Plan Sponsor or its COBRA participants.
9. **Notices.** All notices, requests, demands and other communications, other than daily operations between the parties, hereunder required by the provisions of this Agreement shall be in writing and shall be deemed to have been properly given or served by depositing the same with the United States Postal Office, or any official successor thereto, designated as registered or certified mail, return receipt requested, bearing

adequate postage at the addresses set below:

Administrator:

Medcom Benefit Solutions
COBRA Division
PO Box 10269
Jacksonville, Florida 32247-0269

Employer:

St. Johns County Board of County Commission
500 San Sebastian View
St. Augustine, FL 32084

Each such notice shall be effective upon being deposited as aforesaid. The time period within which a response to any such notice must be given, however, shall commence to run from the date of receipt of the notice by the addressee thereof

10. **Successors and Assigns.** This Agreement and each and every covenant, agreement and provision hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
11. **Governing Law.** Except as provided by federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of Florida. To the extent that (a) the Plan Sponsor initiates legal proceedings against Medcom Benefit Solutions relating to this Agreement; or (b) any legal proceedings relating to this Agreement are initiated by Medcom Benefit Solutions against the Plan Sponsor, the parties consent and agree to the exclusive jurisdiction of the state courts of Duval County, Florida or the district court of the Middle District of Florida, as appropriate.

The parties hereby agree to waive their respective rights to a trial by jury in any legal proceeding against the other with respect to this Agreement.
12. **Captions and Headings.** The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof.
13. **Modifications.** This Agreement may not be changed or terminated orally. This Agreement or any of its provisions may be modified, terminated or waived only by written agreement signed by both parties except for that provided in paragraph 8.
14. **Severability.** If any term or provision of this Agreement or portion thereof is declared unenforceable or invalid, such unenforceable or invalid term or provision shall be deemed severable from all other terms of this Agreement. The remaining terms and provisions shall continue in full force and effect.
15. **Counterparts.** This Agreement may be executed in counterparts, all of which taken together shall constitute one instrument. Delivery of executed signature pages hereof by facsimile transmission shall constitute effective and binding execution and delivery thereof.

16. **Entire Agreement.** Except as specifically provided for herein, this Agreement constitutes the entire Agreement and supersedes all other prior agreements and undertakings, either written or oral, among the parties, or any of them, with respect to the subject matter hereof.

IN WITNESS WHEREOF, by placing their duly authorized signatures below, the parties hereby execute this Agreement and agree to be bound by its terms.

Medcom Benefit Solutions

St. Johns County Board of County Commission

Signature .. Date

Signature Date

Michael J. Bracken
(Printed Name)

(Printed Name)

Title

Title

St. Johns County Board of County Commission

Fee Schedule – COBRA Administration

Effective Date: 05/01/2020

ALL FEES ARE GUARANTEED FOR 36 MONTHS

COBRA – ADMINISTRATION SERVICES		
SERVICE		PRICE
<u>PLAN IMPLEMENTATION</u>		
Plan design consultation; plan implementation checklist, data input and client implementation into Medcom Benefit Solution's administration system.		Waived
ANNUAL RENEWAL FEE		
<u>ANNUAL RENEWAL FEE</u>		
Rate changes and/or carrier changes made to COBRA eligible benefit plans. Includes mailing rate change notices and new coupons to all current COBRA continuants and/or qualified beneficiaries.		Waived
TAKEOVER FEES		
<u>TAKEOVER FEES</u>		
Notification to QB and/or COBRA continuant of new administrator contact information, payment details and updated notice of COBRA rights and obligations.		Waived
MONTHLY ADMINISTRATION FEE PER BENEFIT ELIGIBLE EMPLOYEE		
SERVICE	OPTIONS	PRICE
<u>MONTHLY ADMINISTRATION FEE PER BENEFIT ELIGIBLE EMPLOYEE</u> (PLEASE SELECT ONE)	<u>Option - 1</u> <u>Per Covered Employee Per Month</u>	\$0.45
	Distribution Of Initial Notices	Waived
	Monthly Minimum Fee	\$50.00

Fee Schedule – COBRA Administration

Compliance Processing Fees

SPECIAL PROCESSING FEES FOR SUBSIDY NOTIFICATION COMPLIANCE	
Required additional services regarding eligibility, notification, and coverage options that are to be delivered within very specific time frames by COBRA subsidy law	\$5.00 Per Notification

Optional Services

AVAILABLE SERVICES	
Mass Distribution of COBRA Continuation Initial Notices	\$3.00 / Notice
Open Enrollment Notification Per Notice Plus Mailing Cost	\$9.00 / Kit plus postage
Open Enrollment Notification Prior to Effective Date	\$25.00 / Kit plus postage
Creation of Special Reporting	\$75.00 / Hour
Supplementary Online Web Training	\$75.00 / Hour
On-Site Professional Training	\$500 / Day
Additional Location Set Up (Over 2 locations)	\$100.00 / Per Additional Location

Actuarially Certified COBRA Premium Rate Fees

CREATION OF HRA PLANS OR SELF-FUNDED	
HRA Plan Rates	\$495.00 / Per Plan
Self-Funded Plan Rates	\$495.00 / Per Plan

COBRA ADMINISTRATION PROPOSAL ASSUMPTIONS

Fees contained in the Fee Schedule for COBRA Administration assume the following:

- Medcom Benefit Solutions may adjust the above fees if the turnover rate exceeds 25%.
- Medcom Benefit Solutions will charge an additional \$100.00 per year for each location over two (2).
- Medcom Benefit Solutions will charge an additional fee for any requested postage/mailings, with exception to the standard First-Class Mail with a Certificate of Mailing.
- Medcom Benefit Solutions will charge an additional fee for out-of-town travel expenses for Medcom Benefit Solutions staff (if Onsite Professional Training is requested).
- Medcom Benefit Solutions will retain the 2%, or other statutory, administration fee paid by COBRA continuant. The administrative fee will also apply to situations where the employer pays the COBRA premium. (ex. severance packages)
- Medcom Benefit Solutions will provide up to (two) 2 hours of Online Web Training within the first 60 days of the employer receiving access.
- Medcom Benefit Solutions assumes the employer will continue services for a minimum of 12 consecutive months. An early termination fee of \$500 will be imposed if services are terminated less than 12 months

Medcom will handle COBRA administration for the following locations under St. Johns County Board of County Commission listed below:

St. Johns County Property Appraiser
4030 Lewis Speedway, Ste 203
St. Augustine, FL 32084

St. Johns County Tax Collector
PO Box 9001
St. Augustine, FL 32085

St. Johns County Sheriff's Office
4015 Lewis Speedway
St. Augustine, FL 32084

St. Johns County Supervisor of Elections
4455 Avenue A, #101
St. Augustine, FL 32095

St. Johns County Clerk of Court
4010 Lewis Speedway, Room 171
St. Augustine, FL 32084

Business Associate Agreement

Between:

St. Johns County Board of County Commission
Benefit Plan Sponsor

and

Medcom Benefit Solutions
Service Provider

Effective On:

05/01/2020

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement, is entered into as of 05/01/2020, by and between St. Johns County Board of County Commission Health Plan (the "Plan" or "Covered Entity"); and Medical Cost Containment Services, Inc. DBA Medcom Benefit Solutions (the "Business Associate").

WITNESSETH:

WHEREAS, the Covered Entity previously has entered into an agreement (the "Agreement") with the Business Associate, whereby the Business Associate has agreed to provide certain services to the Plan;

WHEREAS, to provide such services to the Plan, the Business Associate must have access to certain protected health information ("Protected Health Information" or "PHI"), as defined in the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Standards") set forth by the U.S. Department of Health and Human Services ("HHS") pursuant to the Health Insurance Portability and Accountability Act of 1996, ("HIPAA") and amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), part of the American Recovery and Reinvestment Act of 2009 ("ARRA"), the Genetic Information Nondiscrimination Act of 2008 ("GINA"), and the final regulations to such Acts promulgated in January 2013;

WHEREAS, to comply with the requirements of the Privacy Standards, the Covered Entity must enter into this Business Associate Agreement with the Business Associate.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

I. Definitions

The following terms used in this Agreement shall have the same meaning as those terms in the Privacy Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Secretary, Subcontractor, and Use. If other terms are used, but not otherwise defined under this Business Associate Agreement, such terms shall then have the same meaning as those terms in the Privacy Rule.

- (a) ***Business Associate***. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103.
- (b) ***Covered Electronic Transactions***. "Covered Electronic Transactions" shall have the meaning given the term "transaction" in 45 CFR §160.103.

- (c) **Covered Entity.** “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103.
- (d) **Electronic Protected Health Information.** “Electronic Protected Health Information” shall have the same meaning as the term “electronic protected health information” in 45 CFR §160.103.
- (e) **Genetic Information.** “Genetic Information” shall have the same meaning as the term “genetic information” in 45 CFR §160.103.
- (f) **HIPAA Rules.** “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- (g) **Individual.** “Individual” shall have the same meaning as the term “individual” in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- (h) **Privacy Rule.** “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E.
- (i) **Protected Health Information (PHI).** “Protected Health Information (PHI)” shall have the same meaning as the term “protected health information” in 45 CFR §160.103, limited to the information created or received by Business Associate from or on behalf of a Covered Entity pursuant to this Agreement.
- (j) **Required By Law.** “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR §164.103.
- (k) **Secretary.** “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
- (l) **Standards for Electronic Transactions Rule.** “Standards for Electronic Transactions Rule” means the final regulations issued by HHS concerning standard transactions and code sets under the Administration Simplification provisions of HIPAA, 45 CFR Part 160 and Part 162.
- (m) **Security Incident.** “Security Incident” shall have the same meaning as the term “security incident” in 45 CFR §164.304.
- (n) **Security Rule.** “Security Rule” shall mean the Security Standards and Implementation Specifications at 45 CFR Part 160 and Part 164, subpart C.
- (o) **Subcontractor.** “Subcontractor” shall have the same meaning as the term subcontractor in 45 CFR §160.103.
- (p) **Transaction.** “Transaction” shall have the meaning given the term “transaction” in 45 CFR §160.103

(q) ***Unsecured Protected Health Information.*** “Unsecured Protected Health Information” shall have the meaning given the term “unsecured protected health information” in 45 CFR §164.402.

II. Safeguarding Privacy and Security of Protected Health Information

(a) ***Permitted Uses and Disclosures.*** The Business Associate is permitted to use and disclose Protected Health Information that it creates or receives on the Covered Entity’s behalf or receives from the Covered Entity (or another business associate of the Covered Entity) and to request Protected Health Information on the Covered Entity’s behalf (collectively, “Covered Entity’s Protected Health Information”) only:

(i) **Functions and Activities on the Covered Entity’s Behalf.** To perform those services referred in the attached services agreement.

(ii) **Business Associate’s Operations.** For the Business Associate’s proper management and administration or to carry out the Business Associate’s legal responsibilities, provided that, with respect to disclosure of the Covered Entity’s Protected Health Information, either:

(A) The disclosure is Required by Law; or

(B) The Business Associate obtains reasonable assurance from any person or entity to which the Business Associate will disclose the Covered Entity’s Protected Health Information that the person or entity will:

(1) Hold the Covered Entity’s Protected Health Information in confidence and use or further disclose the Covered Entity’s Protected Health Information only for the purpose for which the Business Associate disclosed the Covered Entity’s Protected Health Information to the person or entity or as Required by Law; and

(2) Promptly notify the Business Associate (who will in turn notify the Covered Entity in accordance with the breach notification provisions) of any instance of which the person or entity becomes aware in which the confidentiality of the Covered Entity’s Protected Health Information was breached.

(C) To de-identify the information in accordance with 45 CFR 164.514(a) – (c) as necessary to perform those services required under the Agreement.

(iii) **Minimum Necessary.** The Business Associate will, in its performance of the functions, activities, services, and operations specified above, make reasonable efforts to use, to disclose, and to request only the minimum amount of the Covered Entity’s Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure or request, except that the Business Associate will not be obligated to comply with this minimum-necessary limitation if neither the Business Associate nor the Covered Entity is required to limit its use, disclosure or request to the minimum necessary. The Business

Associate and the Covered Entity acknowledge that the phrase “minimum necessary” shall be interpreted in accordance with the HITECH Act.

(b) *Prohibition on Unauthorized Use or Disclosure.* The Business Associate will neither use nor disclose the Covered Entity’s Protected Health Information, except as permitted or required by this Agreement or in writing by the Covered Entity or as Required by Law. This Agreement does not authorize the Business Associate to use or disclose the Covered Entity’s Protected Health Information in a manner that will violate Subpart E of 45 CFR Part 164 if done by the Covered Entity.

(c) *Information Safeguards.*

(i) *Privacy of the Covered Entity’s Protected Health Information.* The Business Associate will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of the Covered Entity’s Protected Health Information. The safeguards must reasonably protect the Covered Entity’s Protected Health Information from any intentional or unintentional use or disclosure in violation of the Privacy Rule and limit incidental uses or disclosures made to a use or disclosure otherwise permitted by this Agreement.

(ii) *Security of the Covered Entity’s Electronic Protected Health Information.* The Business Associate will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that the Business Associate creates, receives, maintains, or transmits on the Covered Entity’s behalf as required by the Security Rule. The Business Associate will comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information, to prevent use or disclosure of protected health information other than as provided for by the Agreement.

(iii) *Policies and Procedures.* The Business Associate shall maintain written policies and procedures, conduct a risk analysis, and train and discipline its workforce.

(d) *Subcontractors and Agents.* In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, the Business Associate will ensure that any of its Subcontractors and agents that create, receive, maintain, or transmit Protected Health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.

(e) *Prohibition on Sale of Records.* As of the effective date specified by HHS in final regulations to be issued on this topic, the Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an individual unless the Covered Entity or Business Associate obtained from the individual, in accordance with 45 CFR §164.508, a valid authorization that includes a specification of whether the Protected Health Information can be further exchanged for remuneration by the entity receiving Protected Health Information of that individual, except as otherwise allowed under the HITECH Act.

(f) Prohibition on Use or Disclosure of Genetic Information. Business Associate shall not use or disclose Genetic Information for underwriting purposes in violation of the HIPAA rules.

(g) Penalties For Noncompliance. The Business Associate acknowledges that it is subject to civil and criminal enforcement for failure to comply with the privacy rule and security rule under the HIPAA Rules, as amended by the HITECH Act.

III. Compliance with Electronic Transactions Rule

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

IV. Obligations of the Covered Entity

The Covered Entity shall notify the Business Associate of:

(a) Any limitation(s) in its notice of privacy practices of the Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect the Business Associate's use or disclosure of Protected Health Information;

(b) Any changes in, or revocation of, permission by the Individual to use or disclose Protected Health Information, to the extent that such changes may affect the Business Associate's use or disclosure of Protected Health Information; and

(c) Any restriction to the use or disclosure of Protected Health Information that the Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of Protected Health Information.

V. Permissible Requests by the Covered Entity

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

VI. Individual Rights

(a) **Access.** The Business Associate will, within twenty-five (25) calendar days following the Covered Entity's request, make available to the Covered Entity or, at the Covered Entity's direction, to an individual (or the individual's personal representative) for inspection and obtaining copies of the Covered Entity's Protected Health Information about the individual that is in the Business Associate's custody or control, so that the Covered Entity may meet its access obligations under 45 CFR §164.524. Effective as of the date specified by HHS, if the Protected Health Information is held electronically in a designated record Set in the Business Associate's

custody or control. Business Associate will provide an electronic copy in the form and format specified by the Covered Entity if it is readily producible in such form. The Business Associate will provide an electronic copy in the form and format specified by the Covered Entity if it is readily producible in such format; if not readily producible in such format, the Business Associate will work with the Covered Entity to determine an alternative form and format as specified by the Covered Entity to meet its electronic access obligations under 45 CFR 164.524.

(b) Amendment. The Business Associate will, upon receipt of written notice from the Covered Entity, promptly amend or permit the Covered Entity access to amend any portion of the Covered Entity's Protected Health Information in a designated record set as directed or agreed to by the Covered Entity, so that the Covered Entity may meet its amendment obligations under 45 CFR §164.526.

(c) Disclosure Accounting. The Business Associate will maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy the Covered Entity's obligations under 45 CFR §164.528.

(i) Disclosures Subject to Accounting. The Business Associate will record the information specified below ("Disclosure Information") for each disclosure of the Covered Entity's Protected Health Information, not excepted from disclosure accounting as specified below, that the Business Associate makes to the Covered Entity or to a third party.

(ii) Disclosures Not Subject to Accounting. The Business Associate will not be obligated to record Disclosure Information or otherwise account for disclosures of the Covered Entity's Protected Health Information if the Covered Entity need not account for such disclosures under the HIPAA Rules.

(iii) Disclosure Information. With respect to any disclosure by the Business Associate of the Covered Entity's Protected Health Information that is not excepted from disclosure accounting under the HIPAA Rules, the Business Associate will record the following Disclosure Information as applicable to the type of accountable disclosure made:

(A) Disclosure Information Generally. Except for repetitive disclosures of the Covered Entity's Protected Health Information as specified below, the Disclosure Information that the Business Associate must record for each accountable disclosure is (1) the disclosure date, (2) the name and (if known) address of the entity to which the Business Associate made the disclosure, (3) a brief description of the Covered Entity's Protected Health Information disclosed, and (4) a brief statement of the purpose of the disclosure.

(B) Disclosure Information for Repetitive Disclosures. For repetitive disclosures of the Covered Entity's Protected Health Information that the Business Associate makes for a single purpose to the same person or entity (including the Covered Entity), the Disclosure Information that the Business Associate must record is either the Disclosure Information specified above for each accountable disclosure, or (1) the Disclosure Information specified above for the first of the repetitive accountable disclosures; (2) the frequency, periodicity, or number of the repetitive accountable disclosures; and (3) the date of the last of the repetitive accountable disclosures.

(iv) Availability of Disclosure Information. The Business Associate will maintain the Disclosure Information for at least 6 years following the date of the accountable disclosure to which the Disclosure Information relates (3 years for disclosures related to an Electronic Health Record, starting with the date specified by HHS). The Business Associate will make the Disclosure Information available to the Covered Entity within fifty (50) calendar days following the Covered Entity's request for such Disclosure Information to comply with an individual's request for disclosure accounting. Effective as of the date specified by HHS, with respect to disclosures related to an Electronic Health Record, the Business Associate shall provide the accounting directly to an individual making such a disclosure request, if a direct response is requested by the individual. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

(d) Restriction Agreements and Confidential Communications. The Covered Entity shall notify the Business Associate of any limitations in the notice of privacy practices of Covered Entity under 45 CFR §164.520, to the extent that such limitation may affect the Business Associate's use or disclosure of Protected Health Information. The Business Associate will comply with any agreement that the Covered Entity makes that either (i) restricts use or disclosure of the Covered Entity's Protected Health Information pursuant to 45 CFR §164.522(a), or (ii) requires confidential communication about the Covered Entity's Protected Health Information pursuant to 45 CFR §164.522(b), provided that the Covered Entity notifies the Business Associate in writing of the restriction or confidential communication obligations that the Business Associate must follow. The Covered Entity will promptly notify the Business Associate in writing of the termination of any such restriction agreement or confidential communication requirement and, with respect to termination of any such restriction agreement, instruct the Business Associate whether any of the Covered Entity's Protected Health Information will remain subject to the terms of the restriction agreement. Effective February 17, 2010 (or such other date specified as the effective date by HHS), the Business Associate will comply with any restriction request if: (i) except as otherwise required by law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and (ii) the Protected Health Information pertains solely to a health care item or service for which the health care provider involved has been paid out-of-pocket in full.

VII. Breaches and Security Incidents

(a) Reporting

(i) Impermissible Use or Disclosure. The Business Associate will report to Covered Entity any use or disclosure of Protected Health Information not permitted by this Agreement not more than fifty (50) calendar days after Business Associate becomes aware of such non-permitted use or disclosure.

(ii) Privacy or Security Breach. The Business Associate will report to the Covered Entity any use or disclosure of the Covered Entity's Protected Health Information not

permitted by this Agreement of which it becomes aware, including breaches of Unsecured Protected Health Information as required by 45 CFR 164.40, and any Security Incident of which it becomes aware. The Business Associate will make the report to the Covered Entity's Privacy Official not more than fifty (50) calendar days after the Business Associate becomes aware of such non-permitted use or disclosure. If a delay is requested by a law-enforcement official in accordance with 45 CFR §164.412; the Business Associate may delay notifying the Covered Entity for the applicable time period. The Business Associate's report will at least:

(A) Identify the nature of the Breach or other non-permitted use or disclosure, which will include a brief description of what happened, including the date of any Breach and the date of the discovery of the Breach;

(B) Identify the Covered Entity's Protected Health Information that was subject to the non-permitted use or disclosure or Breach (such as whether full name, social security number, date of birth, home address, account number or other information were involved) on an individual basis;

(C) Identify who made the non-permitted use or disclosure and who received the non-permitted use or disclosure;

(D) Identify what corrective or investigational action the Business Associate took or will take to prevent further non-permitted uses or disclosures, to mitigate harmful effects and to protect against any further Breaches;

(E) Identify what steps the individuals who were subject to a Breach should take to protect themselves; and

(F) Provide such other information, including a written report and risk assessment under 45 CFR §164.402, as the Covered Entity may reasonably request.

(iii) **Security Incidents.** The Business Associate will report to The Covered Entity any Security Incident of which the Business Associate becomes aware. The Business Associate will make this report once per month, except if any such Security Incident resulted in a disclosure not permitted by this Agreement or Breach of Unsecured Protected Health Information, Business Associate will make the report in accordance with the provisions set forth above.

(b) **Mitigation.** The Business Associate shall mitigate, to the extent practicable, any harmful effect known to the Business Associate resulting from a use or disclosure in violation of this Agreement.

VIII. Term and Termination

(a) **Term.** The term of this Agreement shall be effective as of as of the date specified above, and shall terminate when all Protected Health Information provided by the Covered Entity to the Business Associate, or created or received by the 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 Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this section.

(b) Right to Terminate for Cause. The Covered Entity may terminate this Agreement if it determines, in its sole discretion that the Business Associate has breached a material term of this Agreement, and upon written notice to the Business Associate of the breach, the Business Associate fails to cure the breach within thirty (30) calendar days after receipt of the notice. Any such termination will be effective immediately or at such other date specified in the Covered Entity's notice of termination.

(c) Treatment of Protected Health Information on Termination.

(i) Return or Destruction of Covered Entity's Protected Health Information as Feasible.

Upon termination or other conclusion of this Agreement, the Business Associate will, if feasible, return to the Covered Entity or destroy all of the Covered Entity's Protected Health Information in whatever form or medium, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of the Covered Entity's Protected Health Information. This provision shall apply to Protected Health Information that is in the possession of Subcontractors or agents of the Business Associate. Further, the Business Associate shall require any such Subcontractor or agent to certify to the Business Associate that it returned to the Business Associate (so that the Business Associate may return it to the Covered Entity) or destroyed all such information which could be returned or destroyed. The Business Associate will complete these obligations as promptly as possible, but not later than thirty (30) calendar days following the effective date of the termination or other conclusion of this Agreement.

(ii) Procedure When Return or Destruction Is Not Feasible. The Business Associate will identify any of the Covered Entity's Protected Health Information, including any that the Business Associate has disclosed to Subcontractors or agents as permitted under this Agreement, that cannot feasibly be returned to the Covered Entity or destroyed and explain why return or destruction is infeasible. The Business Associate will limit its further use or disclosure of such information to those purposes that make return or destruction of such information infeasible. The Business Associate will complete these obligations as promptly as possible, but not later than thirty (30) calendar days following the effective date of the termination or other conclusion of this Agreement.

(iii) Continuing Privacy and Security Obligation. The Business Associate's obligation to protect the privacy and safeguard the security of the Covered Entity's Protected Health Information as specified in this Agreement will be continuous and survive termination or other conclusion of this Agreement.

IX. Miscellaneous Provisions

(a) **Definitions.** All terms that are used but not otherwise defined in this Agreement shall have the meaning specified under HIPAA, including its statute, regulations and other official government guidance.

(b) **Inspection of Internal Practices, Books, and Records.** The Business Associate will make its internal practices, books, and records relating to its use and disclosure of the Covered Entity's Protected Health Information available to the Covered Entity and to HHS to determine compliance with the HIPAA Rules.

(c) **Amendment to Agreement.** This Agreement may be amended only by a written instrument signed by the parties. In case of a change in applicable law, the parties agree to negotiate in good faith to adopt such amendments as are necessary to comply with the change in law.

(d) **No Third-Party Beneficiaries.** Nothing in this Agreement shall be construed as creating any rights or benefits to any third parties.

(e) **Regulatory References.** A reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.

(f) **Survival.** The respective rights and obligations of the Business Associate under Section IX(f) of this Agreement shall survive the termination of this Agreement.

(g) **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit the Covered Entity to comply with the HIPAA Rules.

(h) **Notices.** All notices hereunder shall be in writing and delivered by hand, by certified mail, return receipt requested or by overnight delivery. Notices shall be directed to the parties at their respective addresses set forth in the first paragraph of this Business Associate Agreement or below their signature, as appropriate, or at such other addresses as the parties may from time to time designate in writing.

(i) **Entire Agreement; Modification.** This Business Associate Agreement represents the entire agreement between the Business Associate and the Covered Entity relating to the subject matter hereof. No provision of this Business Associate Agreement may be modified, except in writing, signed by the parties.

(j) **Indemnification.** Each Party agrees to indemnify, defend and hold harmless each other Party, its affiliates and each of their respective directors, officers, employees, agents or assigns from and against any and all actions, causes of actions, claims, suits and demands whatever, and from all damages, liabilities, costs, charges, debts and expenses whatever (including reasonable attorneys' fees and expenses related to any litigation or other defense of any claims), which may be asserted or for which they may now or hereafter become subject arising in connection with (i) any misrepresentation, breach of warranty or non-fulfillment of any undertaking on the part of the Party to the Agreement and (ii) any claims, demands, awards, judgments, actions, and proceedings made by any person or organization arising out of any way connected with the Party's performance.

(k) Assistance in Litigation or Administrative Proceedings. The Business Associate shall make itself, and any Subcontractors, employees or agents assisting the Business Associate in the performance of its obligations under this Agreement, available to the Covered Entity, at no cost to the Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Covered Entity, its directors, officers, or employees based upon a claimed violation of HIPAA, the HIPAA regulations, or other laws relating to security and privacy, except where the Business Associate or its subcontractors, employees, or agents are named as an adverse party.

(l) Binding Effect. This Business Associate Agreement shall be binding upon the parties hereto and their successors and assigns.

(m) Governing Law, Jurisdiction, and Venue. This Agreement shall be governed by the law of Florida, except to the extent preempted by federal law.

(n) Severability. The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

(o) Construction and Interpretation. The section headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. This Agreement has been negotiated by the parties at arm's-length and each of them has had an opportunity to modify the language of the Agreement. Accordingly, the Agreement shall be treated as having been drafted equally by the parties and the language shall be construed as a whole and according to its fair meaning. Any presumption or principle that the language is to be construed against any party shall not apply. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

In Witness Whereof, the parties hereto have caused this Agreement to be executed as of the date first above written.

BUSINESS ASSOCIATE:

COVERED ENTITY:

Medical Cost Containment Services, Inc.
DBA Medcom Benefit Solutions

St. Johns County Board of County Commission

By: _____

By: _____

Title: President _____

Title: _____