

## **HIPAA - Business Associate Contract**

THIS HIPAA PRIVACY SUPPLEMENT TO **Health Reimbursement Arrangement Claims Administration Services Exhibit** is being issued as of January 1, 2020, by and between **(Company Name)** \_\_\_\_\_ hereinafter referred to as the "Covered Entity", and the Corporation **Northeast Benefits Management, LLC**, hereinafter referred to as the "Business Associate". For the purposes of this agreement, the term "Covered Entity" shall also refer to any other employers or businesses that have or will adopt **(Company Name)** \_\_\_\_\_ **Medical HRA Plan** benefit sponsored by **(Company Name)** \_\_\_\_\_ as an Affiliated Employer or Predecessor Employer.

### **Section I - Definitions**

- 1.1 "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 § 160.103.
- 1.2 "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.
- 1.3 "Protected Health Information" 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 Covered Entity.
- 1.4 "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.103.
- 1.5 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- 1.6 "Breach" shall have the meaning ascribed to it in the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act").
- 1.7 "HIPAA Rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR Part 160 and Part 164.

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.

### **Section II - Obligations and Activities of Business Associate**

- 2.1 Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
- 2.2 Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement and to comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information.
- 2.3 Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware. Business Associate agrees to report to Covered Entity any Breach of which Business Associate becomes aware.
- 2.4 Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 2.5 Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- 2.6 Business Associate agrees to make available Protected Health Information in a designated record set to the Covered Entity as necessary to satisfy the Covered Entity's obligations under 45 CFR § 164.524.

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- 2.7** Business Associate agrees to make any amendment(s) to Protected Health Information in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR § 164.526.
- 2.8** Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
- 2.9** Business Associate agrees to provide to Covered Entity or an Individual information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

### **Section III - Permitted Uses and Disclosures by Business Associate**

**3.1** **General Use and Disclosure Provisions** Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this HIPAA Privacy Supplement to «HRA\_Plan\_Name», provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

### **3.2 Specific Use and Disclosure Provisions**

- (a) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (b) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (c) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).
- (d) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

### **Section IV - Obligations of Covered Entity**

#### **4.1 Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions:**

- (a) Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- (b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

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- 4.2 **Permissible Requests by Covered Entity** Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.
- 4.3 **Breach Notifications**. Covered Entity shall be responsible for making notifications to individuals affected by any Breach of which Business Associate provides notice to Covered Entity.

### **Section V - Term and Termination**

5.1 **Term** - The Term of this Agreement shall be effective as of the date shown above, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to 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.

5.2 **Termination for Cause** - Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

- (a) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
- (b) Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
- (c) If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.

5.3 **Effect of Termination** -

- (a) Except as provided in paragraph (b) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- (b) In the event that Business Associate determines that returning or destroying any portion of the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible.
  - (i) **Notice is hereby provided** that the Business Associate has determined that returning or destroying benefit claims and related information received from participants (including the spouse, dependent(s) and health care providers of the participant) in the Internal Revenue Code Section 105 "HRA Plan" and in the Internal Revenue Code Section 125 "Flex Plan" (to include the Medical Flex Spending Account and Dependent Care Assistance Plan) of the Covered Entity is infeasible. Efforts will be made to destroy the information that is readily accessible. However, much of this information, in both electronic and in physical forms, is intermingled with the electronic and physical information of other entities, unrelated to the Covered Entity, with whom the Business Associate has similar working relationship.
  - (ii) Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

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## Section VI - Miscellaneous

- 6.1 A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- 6.2 The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- 6.3 The respective rights and obligations of Business Associate under Section 5.3 of this Agreement shall survive the termination of this Agreement
- 6.4 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HIPAA Rules.
- 6.5 Should any part of this Agreement be declared invalid, any remaining portion shall remain in full force and effect as if this Agreement had been executed with the invalid portion eliminated.
- 6.6 The terms and conditions of this Agreement shall be controlled by the laws of the State of Vermont insofar as State law is applicable under the terms hereof.

Made and entered into as of 1<sup>st</sup> day of January, 2020.

Business Associate: Northeast Benefits Management, LLC

Covered Entity: \_\_\_\_\_

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

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

Name: Sherry O'Leary

Name: \_\_\_\_\_  
(Print)

Title: Principal

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

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

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

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### **Health Reimbursement Arrangement Claims Administration Services Exhibit**

1. NBM will provide customer service and electronic administrative support for your Health Reimbursement Arrangement (HRA) claims processing during our normal business hours.
2. NBM will make the initial determination as to whether participants are entitled to reimbursement for a claim under the Health Reimbursement Arrangement (HRA), as applicable. Health Reimbursement benefit payments are made daily, (Monday through Friday), unless denied or until adequate substantiation is provided, or adequate funding is available.
3. NBM will receive eligibility data from «Company» and any Affiliated Employer or Predecessor Employer, in an electronic format as provided. Each employee will enroll electronically via our web access or manually, as applicable. The parties have agreed to deem the enrollment and eligibility data to be protected health information or "PHI" subject to HIPAA's privacy rules.
4. Contact NBM for any forms that you might need for this plan.
5. Participants will have access to their individual claim and reimbursement history via the website.
6. NBM will prepare the Form 5500 for the HRA, if a Form 5500 is required. Any additional fees applicable will be communicated prior to the filing of the 5500's.
7. NBM will prepare on an annual basis the non-discrimination testing for 105(h), as applicable with assistance from «Company» and any Affiliated Employer or Predecessor Employer.
8. If NBM makes any payment under this agreement to an ineligible person, or if more than the correct amount is paid, NBM shall make a diligent effort to recover any payment made to or on behalf of an ineligible person or any overpayment.
9. NBM only agrees to perform non-discretionary, ministerial duties and purports not to be the Plan Administrator or fiduciary of the Health Reimbursement Arrangement (HRA).
10. NBM will prepare the Section 111 Mandatory Reporting for the Medical HRA, if it is required. This fee will be billed quarterly with a one time set up fee in the first required quarterly billing by NBM.