

# HRA Administration - SummaCare Plan Getting Started Checklist



## INITIAL SETUP

### 1. Setup paperwork – submit executed forms to SummaCare to initiate services.

- a) Employer Plan Setup & Document Checklist
- b) Services Agreement & Business Associate Agreement

### 2. Section 105 plan document and SPD.

BASIC NEO can create or restate the Section 105 plan, in BASIC NEO's standard format and customized to client's plan design\*.

\* If the benefits provided under the Section 105 HRA plan are included as part of an existing "wrap" document, or the employer already has a Section 105 plan document that they do not want to replace, then send a copy of the SPD to BASIC NEO so we can make sure our administration procedures match your written plan.

### 3. Employer Admin Resources

- Plan Summary Sheet provided to employer with contact info, plan design summary, etc.

## ONGOING ADMINISTRATION

### Changes, additions and terminations

Submitted to BASIC NEO by weekly electronic file feed from SummaCare.

### Claim submission

Submitted to BASIC NEO by weekly electronic file feed from SummaCare.

### Reimbursements

Processed weekly and issued directly to providers, with the exception of Rx expenses in which case payment shall be issued directly to the member.

### Secure HR portal for Employers:

Access **plan reports**, including YTD Summary Report, payment register, and balances.

### Employee's online access

To check account balances, claims and payments, or get forms.

### Fund transfer

BASIC NEO will initiate an ACH debit for the amount of reimbursements issued on each processing date. BASIC NEO will notify the employer by email two business days prior to executing the ACH debit.



### Contact Info:

❖ *Submit forms to SummaCare to initiate services*

SummaCare Group Support Specialist  
[quotes@SummaCare.com](mailto:quotes@SummaCare.com) 330.996.5104

### Contact Info:

Rachel DeBonis-Brown, HRA Account Manager  
[rachel.debonis@basicneo.com](mailto:rachel.debonis@basicneo.com) 330.436.3125

# SummaCare Health Reimbursement Account (HRA) Employer Plan Setup & Document Checklist

Powered by: BASIC NEO



BASIC NEO  
525 N. Cleveland-Massillon Rd  
Suite 204  
Akron, Ohio 44333  
p: 1.800.775 (FLEX) 3539  
e: [admin@basicneo.com](mailto:admin@basicneo.com)  
<https://www.basiconline.com/neo/>

HRA is available only for employees enrolled in the employer's SummaCare group health plan. Claims and payments are processed by BASIC NEO on behalf of SummaCare and the Employer.

Plan administration based on claims transmitted directly from SummaCare for payment according to the Employer's specific plan design.

All paperwork must be submitted to SummaCare.  
Forms can be faxed to 330.996.8454 or emailed to [quotes@summacare.com](mailto:quotes@summacare.com).

COMPANY INFORMATION		
Legal Company Name:		
Mailing Address:		Main Phone:
		Fax Number:
City:	State:	ZIP Code:
Physical Address (if different):		
City:	State:	ZIP Code:
Approximate number of W-2 employees (include FTE & PTE):	Estimated number enrolled in HRA:	Federal Tax ID:
Business Structure (check one):	<input type="checkbox"/> Taxable C Corp <input type="checkbox"/> S Corp <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Limited Liability <input type="checkbox"/> Partnership <input type="checkbox"/> Non-profit <input type="checkbox"/> Government or church	
Affiliated Employer who will be covered under the Plan (if any):		
Federal Tax ID of Affiliated Employer participating under the Plan:		

EMPLOYER CONTACT INFORMATION	
<b>HR/Benefits Manager Contact (questions regarding the benefit plan):</b>	
Email:	Phone:
<b>Finance Contact (to receive invoices and email notifications of ACH transfers):</b>	
Email:	Phone:
<b>SummaCare plan account executive:</b>	
Email:	Phone:
<b>Insurance Broker:</b>	<b>Broker Agency:</b>
Email:	Phone:

## SUMMACARE GROUP HEALTH PLAN (GHP) INFORMATION

**Please include a copy of the Health Plan summary with this form**

Under the SummaCare GHP, is there a copay for Office Visits (OV not applied to deductible)?

YES

NO

Under the SummaCare GHP, are there copays for prescriptions? (choose one):

Yes, there are copays. Prescriptions are not applied to the deductible.

No, there are not copays. Prescriptions are applied to the deductible.

### Deductible under the SummaCare Group Health Plan (GHP)

Individual:

Employee + Spouse:

Employee + Child:

Employee + Children:

Family:

Deductible for dependent/family coverage is tracked:

Per individual covered (embedded)

For entire family unit before plan pays (aggregate)

### Maximum Out of Pocket under SummaCare Group Health Plan (GHP)

Individual:

Employee + Spouse:

Employee + Child:

Employee + Children:

Family:

## HRA PLAN DESIGN

**Plan Year: January 1 to December 31.** Since the HRA pays health expenses that qualify under the SummaCare Group Health Plan (GHP) but for the application of deductibles, copays, coinsurance or other limitations, the HRA Plan Year will follow the GHP calendar deductible year.

Effective Date of new HRA Plan (January 1, or other date if HRA is adopted midyear at GHP renewal):

### Maximum Annual HRA Reimbursement (based on coverage tier under SummaCare plan):

Individual:

Employee + Spouse:

Employee + Child:

Employee + Children:

Family:

Mid-year entry: The annual maximum benefit is prorated for mid-year enrollment.

YES

NO

Expenses Eligible For Reimbursement (check all that apply):

In-Network Deductibles

In-Network Coinsurance

Out-of-Network Deductibles

Out-of Network Coinsurance

Office Visit Copays

Prescription Copays

Other (specify): \_\_\_\_\_

## HRA PLAN DESIGN CONT'D

Deductible reimbursement (choose one):

1.  HRA pays first dollar applied to the SummaCare deductible
2.  HRA pays only after a certain amount is accumulated  
\$ \_\_\_\_\_ Specify amount of deductible that must be met per individual covered before the HRA pays. (e.g. funds are available after the first \$250 accumulated toward the deductible)
3.  The HRA shall reimburse the deductible at \_\_\_\_\_% after the out-of-pocket amount listed above, if any, has been met.

## HRA PAYMENT POLICY

Payments will be issued directly to providers, except if copays or Rx is reimburseable under the HRA, then those reimbursements will always go directly to the Member.

Members will be notified via email when a payment has been made to a provider. Your SummaCare account manager will request email addresses for each member. If the employer requests a paper Explanation of Payment to be sent to members, a surcharge will be added to the employer's annual fee (see fee schedule).

**Check one box:**  Email Explanation of Payment to members (no charge)

Mail Explanation of Payment to members (additional PPM charge to Employer – see fee schedule)

### Policies for Claim Runout After End of Plan Year:

1. **Active HRA plan:** As long as the employer maintains an HRA plan under the integrated HRA arrangement with SummaCare, BASIC NEO will pay claims for any eligible expense incurred. Typically all claims for a calendar year are processed within 6 months of the Plan Year end. However, a claim that was previously disputed or was reprocessed could result in a claim being paid beyond that 6 month period.
2. **Terminated HRA plan:** If the employer terminates their HRA plan under the SummaCare integrated HRA arrangement, SummaCare will continue to send claims to BASIC NEO for processing for 90 days after the termination date. Any claims processed by SummaCare after that 90 day period will not be transmitted to BASIC NEO, and will not be payable under the HRA plan.

## HRA PLAN DOCUMENT INFORMATION

**REQUIRED: You must select Option 1 or Option 2 below. Check box to request or waive plan document service.**

ERISA requires a written plan document and Summary Plan Descriptions (SPD) for benefits provided under a Section 105 HRA plan. BASIC NEO will create a Section 105 Plan document and Summary Plan Description in accordance with the plan design choices made on this checklist, **unless you waive this service below.**

Option 1:

Check the box on the left to authorize BASIC NEO to create a signature-ready plan document and Summary Plan Descriptions for your Section 105 HRA plan. See Services Agreement fee schedule for cost for this service.

Did you previously have a Section 105 (HRA) Plan?      YES       NO

If yes, what is the original effective date:

Plan # (i.e.; 501,502):

Effective date of New Plan (or Reinstatement):  
(if reinstating a prior plan, the new document will be a restatement of that Plan)

Option 2:

Check the box on the left if you are waiving our plan documentation service (you already have a written plan or will have one prepared from another source).

**Please forward a copy of the HRA SPD before the beginning of the Plan Year so we have the current SPD on file and so we can verify that your HRA plan operates in accordance with the written plan document.**

## OTHER INFORMATION

**Provide brief description of how HRA claims should be processed and paid. This should summarize the choices you made above, and describe exactly what the HRA plan will reimburse, and any restrictions or out-of-pocket requirements.**

**Also, please provide any other comments here,**

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## BROKER OF RECORD

This shall confirm our "Broker of Record."

This appointment rescinds and supersedes all previous broker appointments and the authority contained herein shall remain in full force until canceled in writing.

This letter authorizes BASIC NEO to furnish our BOR with all information that they may require. This will include but is not limited to the following information (including Protected Health Information covered under HIPAA): client reports, member census data, claim history, plan documents, billing information, etc.

Broker Agency : \_\_\_\_\_

Main Contact at this Broker Agency : \_\_\_\_\_

Email address: \_\_\_\_\_

Unless instructed otherwise, NEO will release requested documentation to other contacts at this specified Broker Agency acting on your behalf.

**Authorized by:** \_\_\_\_\_ (initial here)

## AUTHORIZATION

**The Employer is responsible for ensuring that the eligibility requirements and the other plan design elements comply with the Eligibility, Contributions and Benefits nondiscrimination requirements under IRC Section 105**

Sign here to verify the plan design as it is to be set up and administered by BASIC NEO

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

Form completed by:

Print name of Authorized Employer representative (not broker): \_\_\_\_\_

- Continued on next page -

## BANK ACCOUNT INFORMATION

**The following banking information will be used for BASIC NEO** to initiate automatic bank transfers (debits) to fund reimbursement claims issued by BASIC NEO to Members or providers. BASIC NEO will notify the Employer of the amount of the transaction at least two business days prior to the ACH debit.

Name of Financial Institution:

Address:

City, State, Zip code:

Account type:  Checking  Savings

9-digit Routing Number:

Account Number:

*I hereby authorize BASIC NEO, hereinafter called NEO to initiate ACH bank transfers from the financial institution and account named below. This authority is to remain in full force and effect until NEO has received written notification from Employer of its termination in such time and manner as to afford NEO and the Financial Institution named above a reasonable opportunity to act on it.*

Authorized Signature:

Date:

Please print:

Phone number:

**IMPORTANT:** Please update the ACH filter on your bank account to grant access to **BASIC NEO Trust**.

The identification number is **1382883561**.

As identification numbers are ten digits in length, a "1" precedes our tax ID on HRA ACH files.

### Please submit all paperwork directly to SummaCare.

1. Employer Setup and Plan Document Checklist
2. SummaCare Health Plan Summary
3. HRA Summary Plan Description (SPD) - if waiving service

SummaCare Sales Department

10 N Main St.

Akron, OH 44308

Office: 330-996-8955

Fax: 330-996-8454

Email: [quotes@summacare.com](mailto:quotes@summacare.com)

# HRA ADMINISTRATIVE SERVICES EMPLOYER AGREEMENT



## SummaCare Health Plans

This Agreement for Health Reimbursement Account administration services under the SummaCare health plan arrangement is made and entered into by and between BASIC NEO (“NEO”) and \_\_\_\_\_, (the “Employer”) as of the date this Agreement is executed.

WITNESSETH, THAT:

WHEREAS, the Employer desires to or has established a Health Reimbursement Account Benefit Plan under Section 105 of the Internal Revenue Code (the “Plan”); and

WHEREAS, the Employer desires to retain the services of NEO to act as the claims administrator with respect to that Plan; and

WHEREAS, the parties to this arrangement desire to set forth their understandings in this matter in a written agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, the adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follow:

### 1.0 Status of the Parties.

1.1 The Employer acknowledges and agrees that it is and shall remain the Plan Administrator of the Plan. NEO acknowledges and agrees that it is and shall remain the claims administrator of the Plan during the Term of this Agreement.

### 2.0 Definitions

2.1 The term “Members” shall mean qualified individuals currently enrolled in the Employer’s SummaCare health plan and eligible to receive Health Reimbursement Account (HRA) benefits in conjunction with that health plan coverage. Members will include both active covered employees, and former employees receiving similar benefits under COBRA. 2.2 The term “Provider” shall mean the health care provider, organization or entity that provided health services to the Member, as defined under the SummaCare health plan.



3.0 Duties of NEO.

3.1 NEO shall, consistent with its obligations as the Plan's claims administrator:

- (a) Create a signature-ready Plan Document and Summary Plan Description (if requested), in the standard format used by NEO and according to the specifications of the Employer;
- (b) Establish individual accounts for all Members participating in the Employer's Plan, pursuant to demographic and benefit coverage information provided by SummaCare, and the eligibility status of all Members according to eligibility updates provided by SummaCare.
- (c) NEO will process received claims based on adjudicated claim files provided by SummaCare, and provide payments for qualified expenses on a weekly basis.
  - i. NEO will review the claims submitted by SummaCare and determine the amount, if any, which is due and payable according to the Employer's specific plan design.
  - ii. NEO will disburse benefit payments to such persons entitled to payments under the Employer's plan. Payment shall be made through a banking arrangement established with each Employer. The Employer will agree to make funds available to NEO by authorizing ACH debits initiated by NEO. The Employer will be solely liable and responsible for providing funds for payments of claims hereunder. Payments shall be issued directly to Plan Members or to Providers, as agreed to between the Employer and NEO.
  - iii. In the event that any person is paid less than the amount which they are entitled to under the Employer's Plan, NEO will promptly adjust the underpayment. In the event that any person was paid more than the amount to which they are entitled under the Plan, NEO will take all reasonable steps to correct and recover the overpayment, unless such payments are the result of an error on the part of the Employer or the claim data provided by SummaCare, or where authorized by an Employer in writing. In the event that an overpayment is the result of an error on the part of the Employer or the claim data provided by SummaCare, then it shall be the responsibility of the Employer or SummaCare to recover the overpayment. If the overpayment is the result of an error by NEO and cannot be recovered, NEO will pay the specific HRA deficit to the Employer no later than forty-five (45) days after recovery.
- (d) NEO will provide Explanation of Payment detail to Providers that detail payments from applicable Member HRAs.

- (e) NEO will provide notification to Members when a payment is issued from the Member's HRA. Such notification to Members shall be issued via email, if an email is provided, unless the employer elects to have paper Explanation of Payment notices issued to members (additional fees apply – see Fee Schedule).
- (f) NEO will provide secure web access to Members where they may access their account information through a password-protected site with such web site information updated daily.
- (g) NEO will post a payment register online for the Employer to view the reimbursements issued each processing date.
- (h) NEO will provide secure web access to the Employer to view reports, including employee account balance reports that list all Plan Members and year to date claims, payments and balances.
- (i) NEO shall report all specified information for covered Members to the Center for Medicare & Medicaid Services ("CMS") as provided in Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 ("Act"), and shall take all the necessary steps to register as a Responsible Reporting Entity, as required by the Act. NEO shall timely file all information with CMS and in such manner as required by CMS.

#### 4.0 Duties of Employer.

4.1 Employer shall, consistent with its duties and obligations as the Plan Administrator, take all of the following actions with respect to to implementation and administration of the Plan:

- (a) The Employer shall provide NEO will all the information that NEO will need to establish the Employer account in the administration system, including Employer contacts, billing information and ACH bank numbers.
- (b) The Employer shall provide NEO with HRA plan design information each Plan Year, including eligibility requirements, maximum benefits payable, qualified expenses and exclusions.
- (c) The Employer shall provide all communications to Members regarding the SummaCare and HRA coverage it provides to Members, and receive and respond to any inquiries related to that coverage.
- (d) The Employer shall notify any terminated members eligible under COBRA as to their rights for continuation coverage for their Health Reimbursement Account. If a former employee continues their SummaCare health coverage under COBRA, but does not elect to continue the HRA coverage under COBRA, the Employer is obligated to notify NEO of the date that the HRA coverage is no longer available for that former employee.

- (e) The Employer shall authorize NEO to initiate ACH debit fund transfers for claims payments issued to members in accordance with the ACH fund transfer Agreement executed between NEO and Employer. An additional fee of \$25 per processing cycle applies if another fund transfer method is required by Employer.
- (f) The Employer shall maintain a written Section 105 Plan Document that is consistent with the terms and administrative procedures of the Plan. It is the Employer's responsibility to review and verify the accuracy of the Plan document and Summary Plan Description for the Employer's Plan, and take all steps to update the documents for plan design changes and make sure those documents are in accord with all applicable laws.
- (g) The Employer shall execute a Business Associate Agreement with NEO, as required by HIPAA Privacy and Security regulations.
- (h) The Employer is responsible for filing with any governmental agency or service such description or reporting as may be required by law. NEO does not have any responsibility for such mandatory filings, with the exception of MSP reporting where required.
- (i) The Employer shall pay the fees provided for in this Agreement.

#### 5.0 Fees.

5.1 The parties acknowledge and agree that the amount of compensation to be paid by Employer to NEO is based upon the fee schedule executed between Employer and NEO. That fee schedule is hereby incorporated into this Agreement by reference as if fully rewritten herein. NEO shall submit an invoice by the fifteenth of the month showing the amount of fees due for that month, if any. Employer acknowledges and agrees that it shall pay NEO for those fees within thirty (30) days of receipt of the invoice.

5.2 Monthly administration fees are charged by SummaCare directly. In the event the Employer terminates coverage under the SummaCare health plan or terminates the HRA benefit at plan renewal, the employer will be responsible for payment of any monthly per-employee HRA administrative fees (PEPM) during the plan's 90 day claim run-out period. NEO shall continue to process claims and issue reimbursements for expenses incurred prior to the termination of the HRA plan until the expiration of the run-out period.

#### 6.0 Bonding and Representations.

6.1 NEO warrants and represents that it has secured the appropriate bonding required by ERISA and applicable state law.

6.2 NEO warrants and represents that it is a licensed third party administrator under Ohio law and that it shall at all times maintain that licensure.

## 7.0 Term and Termination.

7.1 This Agreement shall be effective upon the date first mentioned above and shall continue from year to year thereafter, unless terminated as provided in this Agreement. In the event that the Employer terminates their coverage under the SummaCare health plan, or terminates the HRA benefit attached to the SummaCare health plan, SummaCare will continue to send claims data to NEO for HRA claims processing for 90 days beyond the date the HRA benefit terminated. Any claims processed or reprocessed by SummaCare after that date are not provided to NEO nor processed by NEO.

7.2 Either party may terminate this Agreement during the Term hereof by giving ninety (90) days notice in writing to the other party of its intention to terminate.

7.3 Either party may terminate this Agreement immediately upon default by the other party in the performance of an obligation under this Agreement, any misconduct in the performance of this Agreement, or a breach of any of the terms or conditions of this Agreement by the other party, if that other party fails to cure or remedy that default or breach within ten (10) days after service upon it upon notice of that default or breach.

7.4 The parties acknowledge and agree that in the event of termination of this Agreement that NEO shall cooperate in providing such reasonable information as necessary for the Employer to comply with its duties as Plan Administrator. Additionally, NEO shall continue to perform services through the end date of termination and the 90-day claim runout period, and Employer shall pay NEO the per-participant per month administrative rate equal to the rate that was formerly paid to SummaCare, and any other billable services as defined on the fee schedule through that time of termination.

## 8.0 Miscellaneous.

8.1 This Agreement may not be assigned by either party without the prior written consent of the other party. Subject to the foregoing limitation, this Agreement shall inure to the benefit of, and be binding on the parties hereto and their respective successors and assigns.

8.2 This Agreement shall not be modified or amended except in writing signed by the parties hereto.

8.3 No waiver of any provision of this Agreement shall be valid unless the same is in writing and signed by the party against whom it is sought to be enforced. No waiver of any provision of this Agreement at any time will be deemed a waiver of any other provision of this Agreement at such time or will be deemed a waiver of such provision at any other time.

8.4 The invalidity or unenforceability of any provision or section of this Agreement shall in no way effect the validity or enforceability of any other provision or section hereof.

8.5 This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof and supersedes any and all other agreements, understandings, statements, or representations, either oral or in writing, between the parties.

8.6 The captions in this Agreement are for convenience only and shall not be construed to limit or interpret any term hereof.

8.7 This Agreement shall be governed by, enforced under and construed in accordance with, the laws of the State of Ohio.

IN WITNESS WHEREOF, this Agreement is executed as of the date first set forth below.

**Company Name:** \_\_\_\_\_

**BASIC NEO**

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

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

**Printed Name:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

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

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

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

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

**FEE SCHEDULE  
HEALTH REIMBURSEMENT ACCOUNT ADMINISTRATION SERVICES  
SummaCare Health Plans**

Annual Plan Fee (billed at beginning of each plan year)	\$ 250.00
SBC Addendum for HRA benefit	Included
MSP Reporting (if HRA benefit exceeds \$5000 per individual)	Included

**Optional Employer Services**

<b>HRA Plan Document and Summary Plan Description</b> (if requested for a new or restated Section 105 plan document)	Included
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<b>Explanation of Payment mailed to members</b> (per member per month, payable at the beginning of each Plan Year)	\$ 1.00
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The standard fee charged by SummaCare to the Employer for monthly HRA administration includes notification via email at no extra charge.

<b>Non-ACH Fund Transfer</b> NEO initiates an ACH debit to transfer funds from the Employer to NEO to cover payments issued to participants. An additional fee of \$25 per payment processing applies if another fund transfer method is required by Employer. (See Section 4.1 (e) of the Agreement)	\$ 25.00
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<b>5500 Preparation</b> (only required for plan with over 100 HRA participants)	\$ 250.00
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Monthly administration fees for the claim processing and payment services outlined in this Agreement are paid by SummaCare, as described in Section 5.2 of this Agreement.

NEO reserves the right to apply additional fees, either to the Company or to the Employer, for any service required or requested outside the scope of its contracted services.



## BUSINESS ASSOCIATE AGREEMENT

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This Business Associate Agreement, is entered into as of \_\_\_\_\_, by and between \_\_\_\_\_ Health Plan (the "Plan" or "Covered Entity"); and Benefit Administration Services International Corporation (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 to in the 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) No Transfer of PHI Outside United States.** Business Associate will not transfer Protected Health Information outside the United States without the prior written consent of the Covered Entity. In this context, a "transfer" outside the United States occurs if Business Associate's workforce members, agents, or subcontractors physically located outside the United States are able to access, use, or disclose Protected Health Information.

**(iv) 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, 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 it is 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 twenty-five (25) 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 twenty-five (25) 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 twenty-five (25) 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 the date specified below, 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 there from 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 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. For purposes of this agreement, a signed copy delivered by facsimile or electronically shall be treated by the parties as an original of this agreement and shall be given the same force and effect.

**(m) Governing Law, Jurisdiction, and Venue.** This Agreement shall be governed by the law of Michigan 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.

**(p) Electronic Signature.** An electronic signature captured within a software system will result in a legally binding contract under applicable state law.

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

**BUSINESS ASSOCIATE:**

**COVERED ENTITY:**

**BASIC**

\_\_\_\_\_  
(Employer Name)

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

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

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

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

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

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

(Revised 6.18.14)