Business Associate Agreement

This HIPAA Business Associate Agreement is made between Group Benefit Services, Inc. ("GBS") and _____ ("Business Associate"). This Agreement addresses the requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 CFR Parts 160 and 164), and the HITECH Act, and the Omnibus Rule effective March 26, 2013 as it relates to providing of services to a Covered Entity and may be modified or amended from time to time.

1. Definitions

For purposes of this Agreement, each of the following capitalized terms shall have the meaning set forth in this section. All other capitalized terms in this Agreement shall have the meaning given to them elsewhere in the Agreement.

(a) **Breach** – "Breach" shall mean the acquisition, access, use or disclosure of protected health information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information HITECH Act Subtitle D.

(b) **Business Associate**. "Business Associate" shall mean the party who performs or assists GBS in the performance of a function or activity involving the use or disclosure of PHI or one who provides legal, actuarial, accounting, consulting, management, administrative or other services for GBS or a Covered Entity. Will also generally have the same meaning as the term "business associate" at 45 CFR160.103, and in reference to the party to this agreement.

(c) **CFR**. "CFR" shall mean the Code of Federal Regulations.

(d) **Covered Entity**. "Covered Entity" shall mean a Group Health Plan for which each of the parties hereto provide or may provide services involving the use and/or disclosure of Protected Health Information. Will also generally have the same meaning as the term "Covered Entity" at 45 CFR § 160.103.

(e) **Data Aggregation.** "Data Aggregation" shall have same meaning as the term "data aggregation" in 45 CFR § 164.501.

(f) **Designated Record Set**. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR § 164.501.

(g) **Electronic Health Record**. "Electronic Health Record" shall mean an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

(h) **Electronic Protected Health Information**. "Electronic Protected Health Information shall mean Protected Health Information that is transmitted by Electronic Media (as defined in the Security and Privacy Rule) or maintained in Electronic Media.

(i) **Health Care Operations**. "Health Care Operations" shall have the meaning given to such term under the Privacy Rule in accordance with 45 CFR § 164.501.

(j) **HIPAA Rules.** "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

(k) **HITECH.** "HITECH" shall mean the Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act of 2009 to promote the adoption and meaningful use of health information technology. Subtitle D of the HITECH Act addresses the privacy and security concerns associated with the electronic transmission of health information, in part, through several provisions that strengthen the civil and criminal enforcement of the HIPAA rules.

(l) **Individual**. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502 (g).

(m) **Personal Health Record**. "Personal Health Record" shall mean an electronic record of identifiable health information on an individual that can be drawn from multiple sources and that is managed, shared and controlled by or primarily for the individual. HITECH Act Subtitle D.

(n) **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.

(o) **Protected Health Information**. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(p) **Required By Law**. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

(q) **Secretary**. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

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

(s) **Security Rule**. "Security Rule" shall mean the requirements regarding security for the protection of electronic protected health information at 45 CFR Parts 160, 162 and 164.

(t) **Transactions Rule**. "Transactions Rule" shall mean the requirements regarding electronic transactions set forth at 45 CFR Parts 160 and 162.

(u) **Unsecured PHR Identifiable Health Information**. "Unsecured PHR Identifiable Health Information" shall mean information that is not protected through the use of a technology methodology specified by the Secretary in the guidance issued under section 13402(h)(2).

(v) **Vendor of Personal Health Records**. "Vendor of Personal Health Records" shall mean an entity, other than a Covered Entity that offers or maintains a personal health record. HITECH Act Subtitle D.

2. **Obligations and Activities of the Business Associate**.

Business Associate Agrees to:

(a) Permitted Uses. Business Associate shall not use or further disclose PHI except for the purpose of performing Business Associate's functions or activities on behalf of GBS or the Covered Entity or as required by law. Further, Business Associate shall not use PHI in any manner that would constitute a violation of the Privacy and Security Rule and the HITECH Act if so used by the Covered Entity, except that Business Associate may (i) use PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate, and (ii) provide Data Aggregation services relating to the health care operations of the Covered Entity such services are otherwise provided by Business Associate to the Covered Entity.

(b) Permitted Disclosures. Business Associate shall not disclose PHI in any manner that would constitute a violation of the Privacy and Security Rule and the HITECH Act if disclosed by GBS or the Covered Entity, except that Business Associate may disclose PHI in a manner permitted pursuant to the functions or activities it has agreed to provide to or on behalf of GBS or the Covered Entity, for the proper management and administration of the Business Associate; and as required by law. To the extent that Business Associate discloses PHI to a third party, Business Associate must obtain, prior to making any such disclosure,

(i) reasonable assurances from such third party that such PHI will be held confidential as provided by this Agreement and only disclosed as required by law or for purposes for which it was disclosed to such third party, and (ii) an agreement from such third party to immediately notify Business Associate of any breach of confidentiality of the PHI, to the extent it has obtained knowledge of such breach.

(c) Appropriate Safeguards. Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of PHI other than as permitted by this Agreement. The appropriate safeguards will comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information. Business Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities.

(d) Reporting if Improper Use or Disclosure. Business Associate shall report to GBS in writing any use or disclosure of PHI not permitted by this Agreement within five (5) days of becoming aware of such use or disclosure as required at 45 CFR § 164.410 and any security incident of which it becomes aware. The breach notification obligation is to report a potential breach to GBS in order to assist in determining if the breach should be reported to individuals, The HHS Office of Civil Rights (OCR) and potentially the media, on behalf of the Covered Entity.

(e) Business Associate's Agents. In accordance with 45 CFR § 164.502(e)(1)(ii) and 164.308(b)(2) the Business Associate shall ensure that any agents, including subcontractors, to whom it provides PHI, agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation.

(f) Access to Protected Information. Business Associate shall make PHI maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to the Covered Entity for inspection and copying within ten (10) days of a request by GBS or the Covered Entity to enable the Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to 45 CFR § 164.524.

(g) Amendment of PHI. Within ten (10) days of receipt of a request from GBS or the Covered Entity for an amendment of PHI or a record about an individual contained in a Designated Record Set, Business Associate or its agents or subcontractors shall make such PHI available to the Covered Entity for amendment and incorporate any such amendment to enable the Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.526. If any individual requests an amendment of PHI directly from

Business Associate to its agents or subcontractors, Business Associate shall notify GBS or the Covered Entity in writing within five (5) days of the request. Any denial of amendment of PHI maintained by Business Associate or its agents or subcontractors shall be the responsibility of the Covered Entity.

(h) Accounting Rights. Within ten (10) days of notice by the Covered Entity of a request for an accounting of disclosures of PHI, Business Associate and its agents or subcontractors shall make available to the Covered Entity the information required to provide an accounting of disclosures to enable the Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.528. As set forth in, and as limited by, 45 CFR § 164.528, Business Associate shall not be required to provide an accounting to the Covered Entity of disclosures: (i) to carry out treatment, payment or health care operations, as set forth in 45 CFR § 164.502: (ii) to individuals of PHI about them as forth in 45 CFR § 164.502; (iii) to persons involved in the individual's case or other notification purposes as set forth in 45 CFR § 164.510; (iv) for national security or intelligence purposes as set forth in 45 CFR § 164.512(k)(2); or (v) to correctional institutions or law enforcement officials as set forth in 45 CFR § 164.512(k)(5). Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request, but not before the compliance date of the Privacy Rule. At a minimum, such information shall include (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Business Associate, or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to the Covered Entity in writing. It shall be the Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any PHI except as set forth in Section 2(b) of this Agreement.

(i) Governmental Access to Records. Within ten (10) days of receipt of a request Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining the Covered Entity's compliance with the Privacy and Security Rule and the HITECH Act. Business Associate shall provide the Covered Entity a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.

(j) Minimum Necessary. Business Associate and its agents and subcontractors shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure.

(k) Data Ownership. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.

(l) Retention of PHI. Notwithstanding Section 4(e) of this Agreement, Business Associate and its agents or subcontractors shall retain all PHI throughout the term of this Agreement and shall continue to maintain the information required under Section 2(b) of this Agreement for a period of six (6) years after termination of this Agreement.

(m) Audits, Inspections and Enforcement. Within ten (10) days of a written request by GBS or the Covered Entity, Business Associate and its agents or subcontractors shall allow GBS or the Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of PHI pursuant to this Agreement for the purpose of determining whether Business Associate has complied with this Agreement; provided, however, that (i) Business Associate and the Covered Entity or GBS shall mutually agree in advance upon the scope, timing and location of such an inspection; (ii) Covered Entity and GBS shall protect the confidentiality and proprietary information of Business Associate to which the Covered Entity or GBS has access during the course of such inspection; and (iii) Covered Entity and GBS shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate. The fact that the Covered Entity or GBS inspects, or fails to inspect, or has the right to inspect Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with this Agreement, nor does the Covered Entity's or GBS' (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices, constitutes acceptance of such practice or a waiver of the Covered Entity's or GBS's enforcement rights under this Agreement.

3. **Obligations of GBS**.

(a) GBS shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Business Associate pursuant to this Agreement, in accordance with the requirements of the Privacy and Security Rule and the HITECH Act, until such PHI is received by Business Associate.

(b) GBS and/or the Covered Entity shall notify Business Associate of 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 Business Associate's use or disclosure of PHI.

(c) GBS shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

(d) GBS shall notify Business Associate of any restriction to the use or disclosure of PHI that the 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 PHI.

4. **Term and Termination**.

(a) Term. The Term of this Agreement shall be effective as of _____ (Date), and shall terminate when all of the PHI provided by GBS to Business Associate, or created or received by Business Associate on behalf of GBS or the Covered Entity, is destroyed or returned, or, if it is not feasible to return or destroy PHI, protections are extended to such information, in accordance with the termination prevision in this section.

(b) Termination for Cause or Material Breach. As provided for under 45 CFR § 164.504(e)(2)(iii), GBS may immediately terminate this Agreement, any Underlying Agreement and any related agreements if GBS makes the determination that the Business Associate has breached a material term of this Agreement. Alternatively, and in the sole discretion of GBS, may choose to provide Business Associate with written notice to the existence of the breach and provide Business Associate with thirty (30) calendar days to cure said breach upon mutually agreeable terms. In the event that mutually agreeable terms cannot be reached within this thirty (30) day period, Business Associate shall cure said breach to the satisfaction of GBS within an additional fifteen (15) days. Failure by Business Associate to cure said breach or violation in the manner set forth above shall be grounds for immediate termination of any Underlying Agreement by GBS. If termination is not feasible, GBS has the right to report the problem to the Secretary of the U.S. Department of Health and Human Services.

(c) Termination by the Business Associate. If Business Associate determines that GBS has breached a material term of this Agreement, then the Business Associate shall provide GBS with written notice of the existence of the breach and shall provide GBS with thirty (30) calendar days to cure said breach upon mutually agreeable terms. In the event that mutually agreeable terms cannot be reached within this thirty (30) day period, GBS shall cure said breach to the satisfaction of the Business Associate within an additional fifteen (15) days. Failure by GBS to cure said breach or violation in the manner set forth above shall be grounds for immediate termination of this and any Underlying Agreement by the Business Associate.

(d) Judicial or Administrative Proceedings. Either party may terminate this and any Underlying Agreement, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA or HITECH, the HIPAA Regulations or other security or privacy laws, or (ii) a finding or stipulation that the other party has violated any requirement of HIPAA, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

(e) Effect of Termination. Upon termination of this Agreement for any reason, Business Associate shall return or destroy (if agreed by Covered Entity) all PHI that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall continue to expand the protection of Sections 2(a), 2(b), 2(c), and 2(e) of this Agreement to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI not feasible. If Business Associate elects to destroy the PHI, Business Associate shall certify in writing to GBS or the Covered Entity that such PHI has been destroyed.

(f) Survival. The obligations of the Business Associate under this Section shall survive the termination of this Agreement.

5. **Disclaimer**. GBS makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

6. **Certifications**. To the extent GBS determines that such examination is necessary to comply with the Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, GBS or its authorized agents or subcontractors, may, at GBS' expense, examine Business Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to the Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HIPAA Regulations, the HITECH Act or this Agreement.

7. **Amendment to Comply with Law**. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the requirements herein and the requirements of HIPAA, the HITECH Act, the Privacy and Security Rules and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that GBS must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all PHI. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this

Agreement embodying written assurances consistent with the GBS requirements herein and the requirements of HIPAA, the HITECH Act, the Privacy and Security Rules or other applicable laws. GBS may terminate this and any Underlying Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend this Agreement when requested by GBS pursuant to this Section or (ii) Business Associate does not enter into an amendment of this Agreement providing assurances regarding the safeguard of PHI that GBS, in its sole discretion, deems sufficient to satisfy the requirements herein and the requirements of HIPAA, the HITECH Act, and the Privacy and Security Rules.

8. **Assistance in Litigation or Administrative Proceedings**. Business Associate shall make itself, any agents or subcontractors, employees or assisting Business Associate in the performance of its service as a Business Associate to GBS, available to GBS, at no cost to GBS, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against GBS, its directors, officers or employers based upon a claimed violation of HIPAA, the HITECH Act, the Privacy and Security Rules or other laws relating to security and privacy, except where Business Associate, agents or subcontractors and employee is a named adverse party.

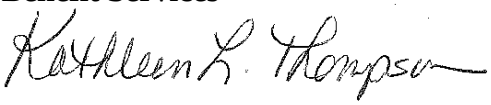
9. **No Third Party Beneficiaries**. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than GBS, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

10. **Effect on Any Underlying Agreement**. Except as specifically required to implement the purposes of this Agreement, all terms of any Underlying Agreement shall remain in force and effect.

11. **Indemnification**. In addition to any indemnification obligations, which may be part of any Underlying Agreement, the Business Associate hereby indemnifies and agrees to hold GBS harmless against any and all claims, costs or damage, including Civil Monetary Penalties, arising from a breach by the Business Associate of its obligations in connection with this Agreement or the HIPAA Privacy and Security Regulations and the HITECH Act.

12. **Interpretation**. The provisions of this Agreement shall prevail over any provisions in any Underlying Agreement that may conflict or appear inconsistent with any provision in this Agreement. This Agreement and any Underlying Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act and the Privacy and Security Rules. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act and the Privacy and Security Rules.

IN WITNESS WHEREOF, the parties hereto duly executed this Agreement as of the Agreement Effective Date.

	Group Benefit Services
By:_____	By: 
Name:_____ (Print Name)	Name: Kathleen L. Thompson
Title: _____	Title: Compliance Advisor
Date: _____	Date: March 1, 2018