

CONSOLIDATED BENEFIT TRUST (CBT)
EMPLOYER PARTICIPATION AGREEMENT (PA)

For

Mott Community College
(Revised May 20, 2009)

SECTION I

EMPLOYER PARTICIPATION IN CBT

- 1.01 The undersigned employer ("Employer") hereby agrees that it shall be a participating Employer in the Consolidated Benefit Trust ("Fund" or "CBT"). The Fund accepts the undersigned Employer as a participating employer in the Fund, subject to the terms and conditions of this Participation Agreement ("Agreement").
- 1.02 The Employer agrees to adopt and be bound by the terms of the Trust Agreement establishing the Fund as currently in effect and as may be amended in the future. A copy of the Trust Agreement and any amendments thereto will be provided to the Employer upon request. The Employer will be notified of any changes in the Trust Agreement that could materially affect benefits being provided to the Employer's employees and families.
- 1.03 The funds received and held by the Fund pursuant to this Agreement are to be used exclusively for the purpose of providing Plan benefits to employees of the Employer and their family members eligible for coverage, and for defraying the cost of administering the Employer's Benefit Plan(s). However, the Fund shall not be obligated to make any payment on behalf of the Employer from any Fund assets other than assets attributable to payments made by the Employer to the Fund for such purpose.
- 1.04 Group benefit coverages provided to the Employer's employees and eligible family members, as identified to the Fund by the Employer pursuant to this Agreement, shall be those specified in the Addendum to this Agreement and when applicable in the Summary Plan Description (SPD). The coverages provided pursuant to this Agreement, the Employer's contribution rates, classes of employees and family members eligible for coverage, and other important information are set forth in the Addendum attached to this Agreement and incorporated herein. The Fund and the Underwriter shall be entitled to rely on the information in the Addendum, and on additional information provided by the Employer as required herein, in determining eligibility of individuals for coverage and eligibility of claims for payment. The Employer also acknowledges its obligation under

PERA to bargain changes to the medical plan with its unionized groups who represent participants in the plan

- 1.05 The Fund is a trust fund and a voluntary employees beneficiary association (VEBA), formed and operated for the purpose of providing medical, sick, life and accident benefits to eligible employees or the Employer and their covered family members. Benefits are provided on an insured basis, through the Fund's insurer, Associated Mutual Hospital Service of Michigan ("Underwriter"), or by other carriers, networks, benefit managers or providers identified in the Addendum.
- 1.06 This agreement supersedes any previous agreements between the parties with respect to any of the employee classes or benefits designated herein.

SECTION II

PLAN BENEFITS AND ADMINISTRATION

- 2.01 All communications, notices or correspondence by the Employer regarding this Agreement or the benefits provided hereunder shall be deemed sufficient if directed to the Fund at the address set forth in the Addendum.
- 2.02 All communications, notices or correspondence by the Fund to the Employer shall be deemed sufficient if directed to the Employer at the address set forth in the Addendum.
- 2.03 The Fund shall administer the benefit coverages specified herein, including billing and collection of contributions; maintenance of eligibility and other pertinent records; and claim inquiry and adjudication (unless otherwise specified in an applicable Underwriter policy or service agreement). The Fund may employ or retain administrators, benefit managers, insurance carriers or other entities to provide services in connection with administration of the benefit coverages.
- 2.04 The Fund shall administer coverages specified herein in accordance with the information furnished by the Employer and on file at the Fund's office which include the Plan's description. Coverages providing employee salary related benefits shall be administered on the basis of the most recent salary data on file at the Fund administrator's office. The Employer shall provide the Fund with the most current salaries of employees covered for benefits by the Fund, as needed for proper administration of salary related benefits.
- 2.05 The Employer shall inform the Fund in writing of any changes to the status of employees or family members that might affect their eligibility for coverage or benefits, within thirty (30) calendar days following the date the Employer has knowledge of the change. The Fund shall inform the Employer in writing of any adjustment in contribution amount resulting

from a change in eligibility or coverage, and the Employer shall remit any required contribution adjustment to the Fund within thirty (30) days after the billing date. Any credit owing to the Employer due to a change in employee status timely reported to the Fund will be reflected in the billing for the next month beginning ten or more business days after the Fund receive notice of the change.

- 2.06 In the event the Employer requests a change in any coverage, in the amount or level of benefits, or in eligibility of employees or family members for coverage, or in the employee classes to be covered, the Fund shall notify the Employer of its acceptance or rejection of the change request within thirty (30) calendar days, together with the effective date and amount of any required changes in the Employer's contribution. If the Fund rejects the Employer's request for any reason, or if the required changes to the Employer's contributions are not acceptable to the Employer, then, notwithstanding any language in Section V to the contrary, the Employer shall have the right to terminate this Agreement within thirty (30) days of receiving such rejection notice or notice of change in contributions.
- 2.07 The Fund shall provide the Plan Description, and/or Summary Plan Description (SPD), plan forms, and/or certificates of coverage in an electronic format to the Employer. The Employer shall be responsible for distributing these documents to its employees.

SECTION III

EMPLOYER RESPONSIBILITIES

- 3.01 The Employer agrees to make monthly contributions to the Fund for each covered employee, covered dependent or other covered family member in the amounts invoiced monthly, payable to the Fund's authorized administrator, in accordance with the terms of this Agreement. All contributions are due by the tenth (10th) calendar day of each month. The Employer agrees to pay interest and fees charged on delinquent contributions pursuant to the Trust Agreement. A delinquency charge in the amount of one and one-half percent (1.5 %) of the monthly invoiced amount will be assessed on past due contributions; provided, however, that no delinquency charge shall be assessed on any portion of an invoice which the Employer has disputed by providing the Fund prior written notice thereof.
- 3.02 The Employer agrees to provide the Fund with a complete and accurate listing of Employees, covered dependents and other individuals covered for benefits at the time this Agreement is signed, as well as with all additional information necessary for the Fund and the Underwriter to administer and pay the benefits. Information the Employer may be requested to provide may include employee census data, other plan coverage, paid and incurred claims data, plan specifications, etc. The Employer further agrees to notify the Fund of any change in the status or identity of employees or other individuals covered for benefits which might affect eligibility for coverage or payment of claims.
- 3.03 The Employer grants to the Fund and the Underwriter and their authorized agents or representatives, the right to examine at all reasonable times the payroll lists and

employee records of the Employer as may be reasonably necessary for the determination or substantiation of the contribution rates or benefits provided by the Fund pursuant to this Agreement. The Employer agrees to provide the Fund with all information the Fund may request in connection with the filing of all reports, returns or applications as necessary for the Fund to remain in compliance with applicable laws and regulations.

SECTION IV

PRIVACY OF INFORMATION

4.01

The Fund is subject to and will comply with all applicable requirements set forth in the Privacy Rule and the Security Rule promulgated under the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”). The Fund will prepare and provide the Notice of Privacy Practices to participants in the plan as required by 45 CFR 164.520 on behalf of the Plan. The Fund will not disclose protected health information to the Employer other than enrollment information and summary health information for the purpose of obtaining premium bids from health plans for providing health insurance under the group health plan or modifying, amending or terminating the plan unless the Fund receives certification from the Employer that the plan documents have been amended to restrict uses and disclosures of such information by the plan sponsor consistent with the requirements of 45 CFR 164.504(f). The Fund shall not disclose personal information or records containing personal information that may be associated with an individual covered under Employer’s plan (s) to a person other than the individual to whom the information pertains or to his or her authorized representative except as authorized by the individual or as permitted by the Business Associate/Trading Partner Agreement attached hereto as Attachment A and incorporated herein by reference, which sets forth the duties of the Fund with regard to Protected Health Information (PHI). The Fund will enter into a like Business Associate/Trading Partner Agreement with insurers, networks, administrators and benefit providers where the services rendered by those entities in connection with the Fund’s performance under this Agreement involve the use or disclosure of PHI.

4.02 Independent insurance agents, and insurance consultants who may come into possession of personal information concerning covered employees and other individuals, are not employees or agents of the Fund and may have privacy obligations that are independent of the Fund’s. The Fund is not responsible for ensuring that such independent agents comply with privacy requirements.

SECTION V

TERM AND DURATION OF THE AGREEMENT

- 5.01 This Agreement shall be effective on the date it is signed by the Employer and by the Fund's authorized representative. The benefit coverages specified herein will commence as of the effective date specified by the Employer and agreed to by the Fund and the Underwriter, as set forth in the Addendum.
- 5.02 The Agreement shall continue in effect for an initial period of twelve (12) months; and shall continue in effect thereafter until terminated either by the Fund or by the Employer upon at least thirty (30) days prior written notice. The Employer shall be obligated to make timely payment of any contributions due prior to the termination of this Agreement, as well as such additional contributions as may be required in this Section.
- 5.03 Notwithstanding any other provision of this Agreement the Fund reserves the right to amend or terminate this Agreement at any time, following thirty (30) days written notice to the Employer, for any reason, including but not limited to the following: (a) the Employer's failure to make a required contribution payment within thirty-one (31) calendar days following the date such payment is due; or (b) the Employer's failure to comply with the terms of this Agreement.
- 5.04 For medical, prescription drug, dental, and/or vision plans, the Employer agrees that upon termination of this Agreement, should the Fund not have received sufficient Employer contributions to pay all incurred eligible claims as of the date of termination, the Employer shall promptly reimburse the Fund in an amount sufficient to pay all outstanding claims, up to a limit of ten percent (10%) of the Employer's annualized premium. The Fund shall provide the Employer with written notice of the termination payment required, after which the Employer agrees to pay such amount to the Fund within sixty (60) days following its receipt of notice, subject to interest and fees that may be assessed for late or delinquent contributions.

Effective on the First Day of **July, 2009**.

MOTT COMMUNITY COLLEGE

CONSOLIDATED BENEFIT TRUST

Name: _____ Name: _____

Signature: _____ Signature: _____

5800 Foremost Drive, S.E.
Grand Rapids, Michigan 49546
(888) 808-0408
Fax (616)808-2899

Title: _____ Title: _____

Date: _____ Date: _____

Terminal Assessment:	10%
Service Requirement:	First of the month following full time employment
"Actively at Work" Requirement:	New hires and/or as provided in the applicable labor agreement or Exempt Benefit Summary.
Weekly Hours Worked:	20 hours per week (half time) or as defined in the applicable labor agreement.
Employee Contributions:	Non Contributory
Annual Open Enrollment Period:	October 1 st through November 30 th with a January 1 st effective date.
Benefit Period:	January 1 through December 31
Coordination of Benefits:	Standard Coordination of Benefits
Assignment of Benefits:	Benefits are assigned
Prescription Drug Manager:	Caremark
Plan Year:	July 1 st , through June 30 th
Agent for Service of Legal Process	CBT
Other Provisions:	

PARTICIPATING EMPLOYER

CONSOLIDATED BENEFIT TRUST

Name: _____ Name: _____

Signature: _____ Signature: _____

Title: _____ Title: _____

Date: _____ Date: _____

ATTACHMENT A

BUSINESS ASSOCIATE/TRADING PARTNER AGREEMENT

I. PREAMBLE

This Business Associate/Trading Partner Agreement (“BAA”) is entered into by and between Employer, as identified in the Participation Agreement to which this Business Associate/Trading Partner Agreement is attached as Exhibit A (“Employer”) on behalf of its group health plan (“Plan” or “Covered Entity”) and Consolidated Benefit Trust (“CBT” or “Business Associate”). Business Associate provides services to Covered Entity pursuant to the Participation Agreement. In the course of providing such services to Covered Entity, Business Associate may be required to use or disclose Protected Health Information of Individuals received from Covered Entity or created or received by Business Associate on behalf of Covered Entity.

This BAA is intended to ensure the compliance of Business Associate with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), and the applicable requirements set forth in the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Rule” at 45 CFR Part 160 and 164, Subparts A and E) and in the Security Standards for the Protection of Electronic Protected Health Information (the “Security Rule” at 45 CFR Part 160 and 164, Subpart C).

In connection with Business Associate’s creation, receipt, use or disclosure of PHI, Business Associate and Covered Entity agree as follows:

II. DEFINITIONS

- a. **Breach.** “Breach” shall mean the unauthorized acquisition, access, use or disclosure of PHI which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably be able to obtain such information. The term “breach” does not include the following:
- (i) any unintentional acquisition, access, or use of protected health information by an employee or individual acting under the authority of a covered entity or business associate if --
 - (I) such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the covered entity or business associate; and
 - (II) such information is not further acquired, accessed, used, or disclosed by any person; or
 - (ii) any inadvertent disclosure from an individual who is otherwise authorized to access protected health information at a facility operated by a covered entity or business associate to another similarly situated individual at same facility; and
 - (iii) any such information received as a result of such disclosure is not further acquired, accessed, used, or disclosed without authorization by any person.
- b. **Business Associate.** “Business Associate” shall mean CBT.
- c. **Covered Entity.** “Covered Entity” shall mean the Plan.
- d. **Designated Records Set.** “Designated Records Set” shall have the same meaning as the term “designated record set” in 45 CFR 164.501.
- e. **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).
- f. **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.
- g. **Protected Health Information or PHI.** “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.

h. Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR 164.103.

i. Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

j. Unsecured PHI. “Unsecured PHI” shall mean means protected health information that is not secured by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute or, if the Secretary of HHS issues guidance on the term “unsecured protected health information,” the meaning set forth in that guidance.

k. All capitalized terms of this BAA not set forth above shall have the meanings set forth in the HIPAA Privacy Rule, HIPAA Security Rule and the HITECH Act, as may be amended by regulations, unless otherwise defined herein.

III. GENERAL TERMS

a. This BAA shall be effective as of the effective date of the Participation Agreement, and shall terminate when all of the PHI covered under this BAA is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information as set forth in paragraphs (b) and (c) below. Furthermore, Business Associate will make good faith efforts to extend the protections set forth in this BAA to PHI that may be maintained, transmitted, created or received by Business Associate on behalf of Covered Entity before the effective date of the Participation Agreement.

b. Except as provided in paragraph (c) of this section, upon termination of this BAA, for any reason, Business Associate shall destroy or return all PHI to Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

c. Notwithstanding the provisions of subparagraph (b), Business Associate shall not destroy any PHI or documentation required by section 164.530(j) of the Privacy Rule to be retained for a period of six (6) years from the later of the date of creation or effective date. All such PHI and documentation shall either (i) be returned to Covered Entity upon termination of this BAA; or (ii) retained by Business Associate for the six-year period mandated by the Privacy Rule, section 164.530(j). As to the balance of the PHI held by Business Associate, if Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. In such case, Business Associate shall extend the protections of this BAA to such PHI and limit further destruction infeasible, for so long as Business Associate maintains such PHI.

d. Except as expressly provided in the Privacy Rule, Security Rule or this BAA, this BAA does not create any rights in third parties.

IV. SPECIFIC REQUIREMENTS

a. Business Associate agrees to create, receive, use, or disclose PHI only in a manner that is consistent with this BAA, the Privacy Rule and the Security Rule and only in connection with providing the services to Covered Entity identified in the Participation Agreement and as Required by Law. Accordingly, in providing services to or for the Covered Entity, Business Associate, for example, will be permitted to use and disclose PHI for “treatment”, “payment” and “health care operations” in accordance with the HIPAA Privacy Rule. However, Business Associate, for example, will not be permitted to sell PHI.

b. Business Associate also may use or disclose PHI received by the Business Associate in its capacity as a Business Associate to the Covered Entity if:

5800 Foremost Drive, S.E.
Grand Rapids, Michigan 49546
(888) 808-0408
Fax (616)808-2899

- (i) the use relates to: (1) the proper management and administration of the Business Associate or to carry out legal responsibilities of the Business Associate, or (2) data aggregation services relating to the health care operation of the Covered Entity; or
 - (ii) the disclosure of information received in such capacity will be made in connection with a function, responsibility, or service identified in (III)(a)(i), and such disclosure is required by law or the Business Associate obtains reasonable assurance from the person to whom the information is disclosed that it will be held confidential and the person agrees to notify the Business Associate of any breaches of confidentiality.
- c. Business Associate agrees to make reasonable efforts to use, to disclose, or to request of the Covered Entity only the minimum necessary amount of PHI to accomplish the intended purpose of the use, the disclosure or the request as defined in 45 CFR 164.502(b), as amended by regulations issued pursuant to the HITECH Act.
- d. Business Associate shall include in all contracts with its insurers, networks, administrators and benefit providers, if such contracts involve the disclosure of PHI to the insurers, networks, administrators and benefit providers, the same restrictions and conditions on the use and disclosure of PHI that are set forth in this BAA.
- e. Business Associate shall maintain safeguards as necessary to ensure that PHI is not used or disclosed except as provided for by this BAA.
- f. In accordance with 45 C.F.R. 164.524 of the HIPAA Privacy Rule, Business Associate will make available to those individuals who are subjects of PHI, their PHI in Designated Records Sets by forwarding the PHI directly to the individual, or by making the PHI available to such individual at a reasonable time and at a reasonable location.
- g. Business Associate shall make available the information necessary to provide an accounting of disclosures of PHI as provided for in 45 C.F.R. 164.528 of the HIPAA Privacy Rule, as such rules on the accounting of disclosures are amended by the HITECH Act.
- h. Business Associate shall make available PHI for amendment and incorporate any amendment to PHI in accordance with 45 C.F.R. 164.526 of the HIPAA Privacy Rule.
- i. Business Associate shall make available to the HHS or its agents the Business Associate's internal practices, books and records, including policies and procedures, relating to the use and disclosure of PHI for purposes of HHS determining compliance by Covered Entity or by Business Associate with the HIPAA Privacy Rule.
- j. Business Associate agrees to use commercially reasonable safeguards to protect against use or disclosure of PHI not provided for by the Participation Agreement and this BAA. Business Associate also agrees (i) to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity; and (ii) to Report to Covered Entity any Security Incidents of which it becomes aware. For the purposes of this BAA, the Parties acknowledge that they do not interpret "Security Incident" to include errors in entering a user's own password made by that user.
- k. Each party shall promptly notify the other of its receipt of written threat of or actual claim, demand, suit, action, or administrative complaint arising out or relating to the HIPAA Privacy Rule and/or Security Rule and to Business Associate's performance of its responsibilities under this BAA and/or the underlying Participation Agreement between the Parties.
- l. Business Associate agrees to act as Covered Entity's agent to obtain from Business Associate and Covered

Entity's other business associates information collected in accordance with the business associate addenda entered into between the Covered Entity and its other business associates, to permit Covered Entity or Business Associate to respond within ten business days to a request by an Individual for access to PHI, amendment of PHI, an accounting of disclosures of PHI, restriction of uses or disclosures of PHI and confidential communications in accordance with 45 CFR 164.524, 164.526, 164.528, 164.522(a), and 164.522(b).

m. Covered Entity will designate one of its employees or will contract with a third party to serve as Covered Entity's privacy official to be responsible for coordinating the development and implementation of Covered Entity's privacy policies and procedures and will designate one of its employees to serve as Covered Entity's security officer to be responsible for coordinating the development and implementation of Covered Entity's security policies and procedures.

n. Business Associate agrees to assist in the development and implementation of the privacy and security policies and procedures promulgated by Covered Entity or on behalf of Covered Entity with regard to PHI that has been created or received by Business Associate that relates to Individuals who are or have been participants or beneficiaries of Covered Entity ("Covered Entity's Privacy and Security Policies and Procedures").

o. Business Associate agrees to train its employees in Covered Entity's Privacy and Security Policies and Procedures and to document that training.

p. Business Associate agrees to sanction its employees who fail to comply with Covered Entity's Privacy and Security Policies and Procedures and to document the application of those sanctions.

q. Business Associate agrees to refrain from intimidating or retaliatory acts against Individuals who exercise their privacy rights as set forth in Covered Entity's Privacy Notice, Covered Entity's Privacy and Security Policies and Procedures, or the Privacy Rule in accordance with 45 CFR 164.530(g).

r. The Parties agree to protect the integrity and confidentiality of any PHI electronically exchanged between them and other appropriate business associates, if any.

s. Each Party will use its best efforts to work with the other to ensure that both Parties comply with all applicable requirements of the law.

t. The HIPAA Rules provide for certain transaction standards for transfer of data between trading partners. While certain standards may or may not be adopted by the Covered Entity (e.g., for eligibility), Business Associate will be prepared to accept the following in accordance with 45 C.F.R. 162.1502: ASC X12N 834 B Benefit Enrollment and Maintenance. The Parties hereby agree that it shall not change any definition, data condition or use of a data element or segment in a standard, add any data elements or segment to the maximum defined data set, use any code or data elements that are either marked "not used" in the standard's implementation specification or are not in the implementation specification, or change the meaning or intent of the implementation specification.

u. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of such PHI and may be reasonably implemented by Business Associate.

v. Covered Entity also shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI and that may be reasonably implemented by Business Associate. Provided, however, that Business Associate must implement requested restrictions on disclosures of PHI to health plans for purposes of carrying out payment or health care operations and the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full.

w. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, with the exception that Business Associate may use or disclose PHI for data aggregation or management and administrative activities of Business Associate as provided in paragraph (b) of this Section.

V. VIOLATION OF THIS AGREEMENT

a. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

b. Business Associate shall report to Covered Entity any use or disclosure of PHI that is not provided for in this BAA of which it becomes aware no later than three (3) business days after the discovery of such unauthorized use or disclosure of PHI.

c. If the use or disclosure of PHI is a Breach, as defined in Section II(a), the notice from the Business Associate described in paragraph (b) of this Section must: (A) identify each individual participant in the Plan whose unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach; and (B) must also include: (1) a brief description of what happened, including the date of the breach and the date of the discovery of the Breach, if known; (2) a description of the types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code); (3) the steps individuals should take to protect themselves from potential harm resulting from the Breach; (4) a brief description of what the Business Associate is doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and (5) contact procedures for Individuals to ask questions or obtain additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

d. Upon receipt of notice of a material violation of this Agreement by Business Associate, regardless of the source of that notice, Covered Entity shall either: (A) provide an opportunity for Business Associate to cure the violation of this Agreement or end the violation and terminate the Participation Agreement if Business Associate does not cure the violation or end the violation within the time specified by Covered Entity; or (B) immediately terminate the Participation Agreement if Business Associate has breached a material term of this BAA and cure is not possible; or (C) if neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.

VI. MISCELLANEOUS

a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

b. Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, Security Rule and HIPAA.

c. Survival. The rights and obligations of Business Associate and Covered Entity under the termination provisions of this BAA shall survive the termination of this BAA.

d. Interpretation. Except as it relates to the use, security and disclosure of PHI and electronic transactions as addressed in this BAA, this BAA is not intended to change the terms and conditions of, or the rights and obligations of the Parties under, the Participation Agreement. In the event of a conflict between the terms and conditions of this BAA and the Participation Agreement with respect to matters addressed in this BAA, the terms and conditions of this BAA shall control. Notwithstanding the foregoing, where provisions of the Participation Agreement, as amended by this BAA, are different from those mandated by the HIPAA Privacy Rule and/or Security Rule,

but are nonetheless permitted by the Privacy Rule and/or Security Rule, the provisions of the Participation Agreement, as amended by this BAA, shall control.

e. Damages. Covered Entity and Business Associate agree that in the event of a violation of this Agreement or threatened violation of this Agreement by Business Associate or one of its subcontractors or other agents of the duties and obligations with respect to PHI, Covered Entity will be irreparably and substantially harmed and that remedies at law will not be adequate. Accordingly, Business Associate agrees that Covered Entity shall be entitled to immediate injunctive relief against such violation of this Agreement or threatened violation of this Agreement and Business Associate consents to the granting of such relief. Injunctive relief shall be in addition to, and not limitations of, any other legal and equitable relief available to Covered Entity under applicable law.