**Health Insurance Portability and Accountability Act (HIPAA)**

**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (the “Agreement”) is made and entered into as of the \_\_ day of \_\_\_\_\_\_\_\_\_\_, 2018 (hereinafter the “Date”) by and between STAFFING FIRM NAME on behalf of our ERISA Medical and Dental plans (hereinafter “Covered Entity”), and **Marsh & McLennan Agency LLC - New England** (hereinafter “Business Associate”).

#### Recitals

**Whereas**, the Department of Health and Human Services (“HHS”) has promulgated regulations at 45 C.F.R. Parts 160-164, implementing the privacy and electronic security requirements set forth in the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended by American Recovery and Reinvestment Act of 2009 (P.L. 111-5, ARRA) (“HIPAA”);

**WHEREAS,** Business Associate acknowledges that certain provisions of HIPAA have been amended in ways that directly regulate Business Associate’s obligations and activities with respect to PHI;

**Whereas,** HIPAA provides, among other things, that Covered Entity is permitted to disclose Protected Health Information (as defined below) to Business Associate and allow Business Associate to obtain and receive Protected Health Information, if Covered Entity obtains satisfactory assurances in the form of a written contract that Business Associate will appropriately safeguard the Protected Health Information; and

**Whereas**, Business Associate will create, receive, maintain or transmit certain Protected Health Information in conjunction with the services being provided by Business Associate to Covered Entity pursuant to the ERISA Medical and Dental plans entered into by the parties as of [EFFECTIVE DATE ENTERED ABOVE] (the “Services Agreement”), thus necessitating a written agreement that meets the applicable requirements of HIPAA. Both parties have mutually agreed to satisfy the foregoing regulatory requirements through this Agreement.

**Now** **therefore**, Covered Entity and Business Associate agree as follows:

1. Definitions; Applicability.

(a) All terms not defined herein shall have the meaning ascribed to them in HIPAA.

(b) This Agreement shall apply only with respect to and to the extent that Business Associate creates, receives, maintains or transmits PHI for or on behalf of Covered Entity.

2. Obligations and Activities of Business Associate

(a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as Required by Law.

(b) Business Associate agrees to use commercially reasonable and appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

(c) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware. In event of a Breach of Unsecured PHI by Business Associate or any of its officers, directors, employees, or subcontractors, Business Associate shall promptly notify Covered Entity in accordance with 45 C.F.R. 164.410.

(d) Business Associate and Covered Entity agree to mitigate, to the extent practicable, any harmful effect that is known to it arising out of a use or disclosure of Protected Health Information in violation of the requirements of this Agreement.

(e) Business Associate agrees to ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate agrees to substantially similar restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(f) Business Associate agrees to provide access to Protected Health Information in a Designated Record Set, in the time and manner Required by Law, to Covered Entity or, as directed by Covered Entity, to an Individual, in order to meet the requirements under 45 C.F.R. 164.524. Business Associate may impose a reasonable cost-based fee for the provision of copies of PHI in a Designated Record Set in accordance with 45 C.F.R. 164.524(c)(4).

(g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set pursuant to 45 C.F.R. 164.526 at the request of Covered Entity or an Individual, and in the time and manner Required by Law.

(h) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate, on behalf of Covered Entity, available to the Secretary, for purposes of the Secretary determining Covered Entity’s or Business Associate’s compliance with HIPAA.

(i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528.

(j) Business Associate agrees to provide to Covered Entity, upon request and in the time and manner Required by Law, an accounting of disclosures of an Individual’s Protected Health Information, collected in accordance with Section 2(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528. If Covered Entity requests an accounting of an Individual’s Protected Health Information more than once in any twelve (12) month period, Business Associate will impose a reasonable fee for such accounting in accordance with 45 C.F.R. 164.528(c).

(k) Business Associate agrees to comply, where applicable, with Subpart C of 45 CFR Part 164 to maintain the security of the Electronic Protected Health Information and to prevent unauthorized uses or disclosures of such Electronic Protected Health Information. Business Associate shall report to the Covered Entity any Security Incident that results in the unauthorized use or disclosure of Protected Health Information of which it becomes aware.

3. Permitted Uses and Disclosures by Business Associate

(a) Business Associate may use or disclose Protected Health Information to perform its obligations and services to Covered Entity, provided that such use or disclosure would not violate HIPAA if done by Covered Entity.

(b) Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate or as otherwise permitted by HIPAA.

(c) Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(d) Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity.

## 4. Obligations of Covered Entity.

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

(a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520, as well as any changes to that notice.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate’s permitted or required uses and disclosures.

(c) Covered Entity shall notify Business Associate, in writing, of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522.

(d) Covered Entity warrants and represents that it shall provide to, or request from, the Business Associate only the minimum Protected Health Information necessary for Business Associate to perform or fulfill a specific function required or permitted hereunder.

(e) If Protected Health Information is transmitted by electronic transfer or sent in physical media by or on behalf of Covered Entity, Covered Entity shall transmit all such Protected Health Information to Business Associate in an encrypted format, to be mutually agreed by the parties.

* 1. Permissible Requests by Covered Entity. Covered Entity represents and warrants that it has the right and authority to disclose Protected Health Information to Business Associate for Business Associate to perform its obligations and provide services to Covered Entity, and Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would violate HIPAA, other applicable laws or Covered Entity’s privacy notice, if done by Covered Entity.

1. Term and Termination

(a) Term. The provisions of this Agreement shall take effect as of the earlier of (i) the Date, or (ii) September 23, 2014 (such date, the “Effective Date”), and shall continue for the term of the Services Agreement.

(b) Termination for Cause. Upon the parties mutual agreement that there has been a material breach by Business Associate which does not arise from any breach by Covered Entity, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within a mutually agreeable time, or immediately terminate this Agreement if cure of such breach is not possible.

(c) Effect of Termination.

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall request, in writing, Protected Health Information that is in the possession of subcontractors of Business Associate.

(2) In the event the Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall extend the protection of this Agreement to such Protected Health Information and limit further uses or disclosures to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

6. Miscellaneous

(a) Regulatory References. A reference in this Agreement to a section in HIPAA means the section as in effect or as amended, and for which compliance is required.

(b) Amendment. Upon the enactment of any law or regulation affecting the use or disclosure of Protected Health Information, or the publication of any decision of a court of the United States or any state relating to any such law or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, the parties agree to negotiate in good faith to amend the Agreement as necessary to comply with such law or regulation.

(c) Survival. The obligations of Business Associate under section 5(c)(2) of this Agreement shall survive the termination of this Agreement.

(d) Interpretation; Entire Agreement. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits both parties to comply with HIPAA. This Agreement shall be subject to the terms and conditions of the Services Agreement; provided, however, that in the event of any inconsistency or conflict between this Agreement and any the Services Agreement, the terms, provisions and conditions of this Agreement shall govern and control. This Agreement and the Services Agreement constitute the complete agreement between the parties relating to the matters specified in this Agreement, and supersede all prior representations or agreements, whether oral or written, with respect to such matters.

(e) No third party beneficiary. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.

(f) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Name of Client],

On behalf of: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [NAMES OF PLAN(S)]

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

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**Marsh & McLennan Agency LLC - New England**

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

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