RESOLUTION APPROVING CONSULTING SERVICES AGREEMENT BETWEEN SARPY COUNTY
AND KANSAS CITY SERIES OF LOCKTON COMPANIES, LLC

WHEREAS, pursuant to Neb. Rev. Stat. §23-104 (6), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103, the powers of the County as a body are exercised by the County Board; and,

WHEREAS, the County desires to enter into a contract for wellness program assistance with Kansas City Series of Lockton Companies, LLC; and,

WHEREAS, Kansas City Series of Lockton Companies, LLC has the required qualifications and experience to provide these services.

NOW, THEREFORE, BE IT RESOLVED that the attached agreement to the consulting services agreement is hereby approved.

BE IT FURTHER RESOLVED that the Chair and Clerk are hereby authorized to execute such form agreement with various parties, under the terms and conditions stated therein.

The above resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 20th day of November, 2018.

__________________________  ______________________________
Sarpy County Board Chairman  Sarpy County Clerk

Chief Deputy

Sarpy County Clerk
MEMO

To: Sarpy County Board of Commissioners

From: Beth Garber

Re: Agreement with Lockton Companies

Over the past several years the County’s Wellness Program has worked very closely with Lockton Companies to develop strategies and improve the County Wellness Program. Lockton has provided key insight in implementation of successful programs along with assisting us in improving participation in the biometric screening and health risk assessment (HRA). The attached agreement will extend the contract for one (1) year, until October 31, 2019.

Under the amendment, Lockton will continue to provide similar services at the rate of $19,800. Services include, but are not limited to: coordination of the biometric screening, HRA administration, biometric screening data analysis, personal health profiles, wellness program support, clinical nurse advocate program and employer aggregate reporting.

Please feel free to contact me with any questions.

November 8, 2018

Beth Garber

cc: Deb Houghtaling
    Dan Hoins
    Scott Bovick
    Brian Hanson
    Linda Welles
CONSULTING SERVICES AGREEMENT
SARPY COUNTY, NE
and
KANSAS CITY SERIES OF
LOCKTON® COMPANIES, LLC

This Agreement made and entered into effective as of this 1st day of November, 2018, by and between Sarpy County, having offices at 1210 Golden Gate Drive, Papillion, NE 68046-2895 (hereinafter referred to as “Client”), and Kansas City Series of Lockton Companies, LLC, having offices at 444 W. 47th Street, Suite 900; Kansas City, Missouri 64112 (hereinafter referred to as “Lockton”).

Client wishes to procure certain services that can be performed by Lockton; and Lockton can provide and desires to render to Client such services; and

The parties agree that it would be to their mutual advantage to execute this Agreement and thereby define the terms and conditions that shall control the rendering of services provided to Client by Lockton.

Now, therefore, in consideration of the foregoing recitals, the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

I. Service Period

This Agreement will be in effect from the effective date above through October 31, 2019 unless earlier terminated in accordance with the provisions of the Agreement.

II. Service Compensation

A. All consulting and/or insurance services provided by Lockton as set forth in Addendum A with the exception of the additional Nurse Advocate calls, will be performed for a fee of $19,800 per contract period which includes 20 nurse advocate participants with unlimited nurse access, paid monthly and billed by Lockton client; additionally, Nurse Advocate participants beyond the original 20
included in the fee, will be invoiced quarterly at the rate of $235/participant. Participant will then have unlimited access to the nurse for the remainder of the contract period. Additional participants require approval from Client.

B. It is further agreed that no portion of any noncash compensation (e.g., meals, entertainment, travel, gifts, etc.) received by Lockton from any insurance company, intermediary, or other third party as a result, in whole or in part, of Lockton’s services as Client’s insurance broker shall be offset or credited against the compensation payable to Lockton as set forth above.

Payment of all invoices submitted under this Agreement will be made within thirty (30) days.

III. Services

A. It is hereby understood and agreed that in consideration of the compensation set forth above, Lockton will provide the consulting services outlined in Addendum A, which is attached to and made part of this Agreement.

B. It is further agreed that other risk management services may be undertaken that are outside the foregoing scope of services by mutual consent, which consent may be verbal provided that it is subsequently acknowledged in writing by either or both of the parties. Amendments may be made to this Agreement as deemed appropriate by both parties.

C. When in Lockton’s professional judgment it is necessary or appropriate, Lockton may utilize the services of third parties or other appropriate outside vendors to assist in the servicing of Client’s employee wellness programs. However, this may only be done after consultation with and prior approval by Client.

IV. Termination of Services

Client or Lockton may terminate this Agreement at any time with thirty (30) days’ written notice to the other party. Lockton shall be entitled to receive all fees earned up to the effective date of termination.
V. Additional Obligations of Client/Confidentiality

A. Client shall provide Lockton with reasonable cooperation and assistance necessary for Lockton to fulfill its responsibilities to Client pursuant to the terms of this Agreement, including, without limitations, copies of all documents reasonably requested by Lockton and the cooperation of and access to certain of Client’s personnel.

B. Lockton acknowledges that the nature of its relationship with Client is one in which Client shall entrust Lockton as the custodian of certain of Client’s information, some of which may be of a confidential or proprietary nature. Lockton shall undertake all reasonable efforts to maintain the integrity of all of Client’s information, whether or not such information is confidential or proprietary. In addition, all patient files and medical records generated as a result of this Agreement shall be considered Protected Health Information (PHI) as defined by the Business Associate Agreement by and between Lockton and the Client, which is attached to and made part of this Agreement in Addendum B. Lockton’s receipt, transmission, maintenance, creation, use and disclosure of all PHI shall be governed by the terms and conditions of the BAA.

VI. General Conditions

A. Neither party shall assign the rights nor duties herein set forth without the prior written consent of the other party.

B. The terms and conditions of this Agreement constitute the entire Agreement between the parties with respect to the subject matter hereof. Subject to the provisions of Section III.B., this Agreement shall not be amended except by a written amendment signed by both parties, and no promises, agreement, or representations not herein set forth shall be of any force or effect between them. This Agreement shall serve to terminate and supersede all agreements and undertakings heretofore entered into between the parties on subjects covered by this Agreement.

C. Lockton and Client shall indemnify, defend, and hold one another, their directors, officers, employees, agents, and representatives harmless from and against any and
all claims, damages, losses, or expenses (including such parties’ reasonable attorney, accountant, and expert witness fees and costs) incurred by one party as the result of (i) a material breach by the other party of any of its obligations under this Agreement or (ii) any willful or negligent conduct of the other party.

D. It is agreed that nothing contained herein is intended or should be construed in any manner as creating or establishing a partnership or joint venture between the parties. Any and all acts that either party or their personnel, employees, agents, contractors, or servants, perform pursuant to the terms of this Agreement shall be undertaken as independent contractors and not as employees of the other. The parties shall, except as provided herein, act in their individual capacities and not as agents, employees, partners, joint ventures or associates of the other. Any employee or agent of one shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Neither party nor its personnel, employees, agents, contractors, or servants shall be entitled to any benefits of the other. The parties shall not provide any insurance coverage to the other or their employees including, but not limited to, workers’ compensation insurance. Each party shall pay all wages, salaries and other amounts due its employees and shall be responsible for all reports, obligations, and payments pertaining to social security taxation, income tax withholding, workers’ compensation, unemployment compensation, group insurance coverage, collective bargaining agreements or any other such similar matters. Neither party shall have any authority to bind the other by or with any contract or agreement, nor impose any liability upon the other. All acts and contract of each shall be in its own name and not in the name of the other, unless otherwise provided herein.

E. Pursuant to Neb. Rev. Stat. § 73-102, the parties declare, promise, and warrant that they have and will continue to comply fully with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C.A. § 1985, et seq.), and the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. § 48-1101, et seq., in that there shall be no discrimination against any employee who is employed in the performance of this Agreement, or against any applicant for such employment, because of age, color, national origin, race, religion, creed, disability, sex, or other protected categories.
F. Pursuant to Neb. Rev. Stat. § 23-3113, the Parties hereto declare and affirm that no officer, member, or employee of the County, and no member of its governing body, and no other public official of the County who exercises any functions or responsibilities in the review or approval of the undertaking described in this Agreement, or the performing of services pursuant to this Agreement, shall participate in any decision relating to this Agreement which affects his or her personal interest, or any corporation, partnership, or association in which he or she is directly or indirectly interested; nor shall any employee of the County, nor any member of its governing body, have any interest, direct or indirect, in this Agreement or the proceeds thereof.

G. Pursuant to Neb. Rev. Stat. § 4-114 et seq., each party shall use federal immigration verification systems to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification systems means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

H. During the course of services provided for by this Agreement, Lockton shall maintain Workers’ Compensation Insurance in accordance with the Workers’ Compensation laws of the State of Nebraska; Professional Liability Insurance with a minimum coverage of $1,000,000 per occurrence, $2,000,000 if aggregate; Automobile Liability Insurance with a combined single limit coverage of $1,000,000 for each accident; and Commercial General Liability of $1,000,000 per occurrence, $2,000,000 if aggregate. For the Commercial General Liability and Automobile Liability Insurance, the Client is to be named as an additional insured on the insurance coverage identified in this section. In addition, the insurance coverage identified in this section shall be kept in force during the life of the Agreement and if there is any event of cancellation or, or material change in any of the insurance coverage, Lockton shall notify the Client within thirty (30) days. Lockton shall furnish proof of insurance coverage, if requested by the Client.
I. Any communication or notice required or which may be given hereunder shall be addressed to Client and to Lockton at their addresses listed below.

County Clerk  
1210 Golden Gate Drive #1250  
Papillion, NE 68046

Lockton Companies  
444 W. 47th Street, Suite 900  
Kansas City, MO 64112

J. This Agreement shall be governed for all purposes by the laws of the state of Nebraska.

In witness whereof, the parties hereto have executed the Agreement in duplicate intending each copy to serve as an original as of the day and year first written above.

KANSAS CITY SERIES OF LOCKTON COMPANIES, LLC

BY: __________________________ DATE: 11/27/18

Timothy Mercham, Chief Operating Officer

SARPY COUNTY, NE

BY: __________________________ DATE: 11/20/18

Don Kelly, Sarpy County Board Chairman  
County Clerk  
Chief Deputy

Approved as to form:

Deputy Sarpy County Attorney
## Addendum A – Consulting Agreement Services

<table>
<thead>
<tr>
<th>Standard Health Risk Solutions Services</th>
<th>Typical Frequency</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>❖ <strong>Health Risk Assessment (HRA)</strong> — Administer the delivery of an online</td>
<td>Annually</td>
<td>Included in fee</td>
</tr>
<tr>
<td>survey of individual medical history and lifestyle choices behaviors.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>❖ <strong>Biometric Screening data</strong> — Integrate biometric and laboratory result</td>
<td>Annually</td>
<td>Included in fee</td>
</tr>
<tr>
<td>data from third party health screening vendor.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>❖ <strong>Preventive Screening Form administration</strong> — The collection / measurement</td>
<td>Annually</td>
<td>Included in fee</td>
</tr>
<tr>
<td>of height, weight, waist circumference, blood pressure, as well as laboratory</td>
<td></td>
<td></td>
</tr>
<tr>
<td>screening from physician verification forms.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>❖ <strong>Employee personal health profile</strong> — An individualized comprehensive</td>
<td>Annually</td>
<td>Included in fee</td>
</tr>
<tr>
<td>report that presents each individual’s information and results and stratifies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>into a risk category.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>❖ <strong>Employer Aggregate Report</strong> — A comprehensive aggregate report of the</td>
<td>Annually</td>
<td>Included in fee</td>
</tr>
<tr>
<td>Client’s biometric and lifestyle results stratified by risk category, and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>executive review of findings.</td>
<td></td>
<td></td>
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<tr>
<td>❖ <strong>Incentive Tracking and Reporting</strong> — A report will be provided with</td>
<td>Annually</td>
<td>Included in fee</td>
</tr>
<tr>
<td>names of participants and their incentive qualification status.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Nurse Advocate                                                              |                   |                     |
| ❖ InfoLock data feed                                                        | Monthly           | Included in fee     |
| ❖ Provide Aggregate InfoLock Reporting                                       | Annually          | Included in fee     |
| ❖ Coach and coordinate with members who voluntarily participate in Nurse     | Case by Case basis| First 20 participants included in fee. $235 per call participant for any participants beyond the first 20. |
| Advocate                                                                    |                   |                     |
| ❖ Prepare annual Client Service Plan                                        | Annually          | Included in fee     |
ADDENDUM B
BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (the “Agreement”) is made and effective this 1st day of November, 2018 (the “Effective Date”), by and between the Kansas City Series of Lockton Companies, LLC (“Lockton”), City of Bellevue (“Client”) and the group health plan(s) maintained by Client (“Plan”).

WHEREAS, Plan is an employee welfare benefit plan as defined by Section 3(1) of the Employee Retirement Income Security Act of 1974 (“ERISA”) that provides medical care to its employees and their dependents;

WHEREAS, Plan has engaged Lockton to provide certain health and welfare insurance brokerage and/or consulting services that may include, as applicable, Pharmacy Analytic Services, InfoLock® Services and/or other consulting services as mutually agreed to by the parties (collectively, “Services”), which may or will necessitate Disclosure of Protected Health Information (“PHI”) to Lockton; and

WHEREAS, the parties to this Agreement are committed to compliance with the Privacy, Security, Breach Notification, Standard Transactions and Enforcement Rules of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its implementing regulations at 45 C.F.R. Parts 160 to 164 (“HIPAA Regulations”) and any current and future regulations promulgated under HIPAA or the Health Information Technology for Economic and Clinical Health Act as incorporated in the American Recovery and Reinvestment Act of 2009 (the “HITECH Act”);

WHEREAS, Client is authorized to enter into this agreement on behalf of Plan;

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree to maintain the privacy and security of PHI as set forth herein:

ARTICLE 1. DEFINITIONS

“Breach” means the acquisition, access, use or disclosure of protected health information which compromises the privacy or security of such information as determined by the HIPAA Regulations.

“Data Aggregation” means the combining of Protected Health Information created or received by Lockton in its capacity as a business associate of the Plan with the Protected Health Information received by Lockton in its capacity as a business associate of another covered entity to permit data analyses that relate to the health care operations of the respective covered entities.
“Designated Record Set” means a group of records maintained for the Plan that is (i) the medical records and billing records about individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) Used, in whole or in part, by or for the Plan to make decisions about individuals. For the purposes of this definition, “record” means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, Used, or disseminated by or for the Plan.

“Disclose” or “Disclosure” means release, transfer, provision of access to, or divulging in another manner, of information outside the entity holding the information.

“Electronic Media” means (i) electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card, or (ii) transmission media Used to exchange information already in electronic storage media. For the purposes of this definition, “transmission media” include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dialup lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission.

“Electronic PHI” means individually identifiable health information that is transmitted by or maintained in Electronic Media.

“Individual” means the person who is the subject of Protected Health Information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

“InfoLock® Services” means the performance of data analytic consulting services for the Client, including but not limited to: medical and pharmacy claims, Health Risk Assessment and biometric screening information to identify possible trends in chronic disease, high-cost claims, and utilization patterns.

“Pharmacy Analytics Services” means the performance of consulting services for the Client, including but not limited to: data modeling, benchmarking, auditing, marketing of the program or Requests for Proposals (RFP), diagnostic analysis, reporting and related pharmacy financial and clinical information consulting services.

“Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E.
“Protected Health Information” or “PHI” means information that is created or received by Lockton from or on behalf of the Plan and is information about an individual, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be Used to identify the individual. PHI does not include individually identifiable health information in: (i) education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. 1232g; and (ii) records described at 20 U.S.C. 1232g(a)(4)(B)(iv). PHI also does not include individually identifiable health information maintained by an entity in its role as an employer.

“Required By Law” means a mandate contained in law that compels a covered entity to make a Use or Disclosure of Protected Health Information and that is enforceable in a court of law. Required By Law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

“Secretary” means the Secretary of Health and Human Services (HHS) or any other officer or employee of HHS to whom the authority involved has been delegated.

“Security Incident” means the attempted or successful unauthorized access, Use, Disclosure, modification, or destruction of information or interference with system operations in an information system. Inconsequential incidents that occur on a daily basis, such as scans or pings on Lockton’s networks or servers containing electronic PHI, shall not be considered a Security Incident subject to reporting, unless so required by the Privacy Rule.


“Standards for Electronic Transactions Rule” means the final regulations issued by Health and Human Services concerning standard transactions and code sets under the Administrative Simplification provisions of HIPAA, 45 C.F.R. Parts 160 and 162.
“Unsecured PHI” means PHI that is not rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary.

“Use” means the sharing, employment, application, utilization, examination, or analysis of information.

All terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Rules.

ARTICLE 2. OBLIGATIONS AND ACTIVITIES OF LOCKTON

2.1 Lockton agrees to not Use or further Disclose PHI other than as permitted or required by this Agreement or as Required By Law.

2.2 Lockton agrees to use appropriate safeguards to prevent the Use or Disclosure of the PHI other than as provided for by this Agreement.

2.3 Lockton agrees to implement administrative, physical, and technical safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI.

2.4 Lockton agrees to notify the Plan of any Security Incident or Use or Disclosure of PHI not permitted by this Agreement of which Lockton is aware, including any Breach of Unsecured PHI as required by 45 C.F.R. 164.410. Such notice shall be provided within three (3) business days and shall include, to the extent possible, information that is required to be included in notification to the individual under 45 C.F.R. 164.404.

2.4.1 Lockton and Plan agree that unsuccessful attempts at unauthorized access or system interference occur frequently and that there is no significant benefit for data security from requiring the documentation and reporting of such unsuccessful intrusion attempts. In addition, both parties agree that the cost of documenting and reporting such unsuccessful attempts as they occur would outweigh any potential benefit gained from reporting them. Consequently, both Lockton and Plan agree that this Agreement shall constitute the documentation, notice and written report of such unsuccessful attempts at unauthorized access or system interference as required above and by 45 C.F.R. Part 164, Subpart C and that no further notice or report of such attempts will be required. By way of example (and not limitation in any way), the Parties consider the following to be illustrative (but not exhaustive) of unsuccessful Security Incidents when they do not result in unauthorized access, use, disclosure, modification, or destruction of e-PHI or interference with an information system:
1. Pings on a Party’s firewall,
2. Port scans,
3. Attempts to log on to a system or enter a database with an invalid password or username,
4. Denial-of-service attacks that do not result in a server being taken off-line, and
5. Malware (e.g., worms, viruses).

Otherwise, Lockton will document as required by 45 C.F.R. Part 164, Subpart C and report to Plan (i) any successful unauthorized access, use, disclosure, modification, or destruction of Plan’s Electronic Protected Health Information of which Lockton becomes aware, or (ii) any successful unauthorized interference with system operations in Lockton’s Information System containing Plan’s Electronic Protected Health Information of which Lockton becomes aware. Such reports will be provided within ten (10) business days of when Lockton becomes aware of the incident.

2.5 Lockton may disclose PHI to subcontractors, vendors and/or other third parties, including affiliates of Lockton, to the extent necessary to perform the Services. To the extent any subcontractor, vendor and/or other third party creates, receives, maintains or transmits PHI of the Plan on behalf of Lockton, Lockton agrees to ensure that any such subcontractor, vendor and/or other third party agrees in writing to the same restrictions and conditions that apply to Lockton with respect to such PHI.

2.6 To the extent any affiliate of Lockton creates, receives, maintains or transmits PHI of Plan to provide Services to Client pursuant to this Agreement, Lockton agrees to ensure that such affiliate agrees in writing to the same restrictions and conditions that apply to Lockton with respect to such PHI.

2.7 At the request of the Plan, Lockton agrees to provide access to PHI in a Designated Record Set, as directed to an Individual in order to meet the Plan’s obligations under 45 C.F.R. 164.524.

2.8 Lockton agrees to make any amendment(s) to PHI in a Designated Record Set as directed by or agreed to by Plan and to take any other measures necessary to satisfy the Plan’s obligations pursuant to 45 C.F.R. 164.526.

2.9 Lockton agrees to make internal practices, books, and records, relating to the Use and Disclosure of PHI received from, or created or received by Lockton on behalf of, the Plan available to the Secretary, in a time and manner mutually agreed upon by Lockton and the Plan or as designated by the Secretary, for purposes of the Secretary determining the Plan’s compliance with HIPAA.

2.10 Lockton agrees to document such Disclosures of PHI and, provide such information to Plan as would be required for the Plan to respond to a request by an individual for an Accounting of Disclosures of PHI in accordance with 45 C.F.R. 164.528.
2.11 To the extent Lockton is to carry out one or more of Plan’s obligations with respect to HIPAA, Lockton will comply with the requirements of HIPAA in the performance of such obligations.

ARTICLE 3. PERMITTED USES AND DISCLOSURES BY LOCKTON

Lockton will Use or Disclose PHI including, without limitation, claim, eligibility, financial and other data received from, or created or received on behalf of Plan consistent with the minimum necessary requirements applicable to Plan set forth in 45 C.F.R. 164.514(d) and only:

3.1 As permitted or required by this Agreement or applicable law, or to perform Services on behalf of Client and Plan as described in this Agreement, but not in such a manner that would violate HIPAA.

3.2 For the proper management and administration of Lockton or to carry out the responsibilities of Lockton, provided that Lockton will only Disclose PHI pursuant to this Paragraph 3.2 where such Disclosure is Required By Law or Lockton obtains reasonable assurances from the person to whom the PHI is Disclosed that it will remain confidential and Used or further Disclosed only as Required By Law or for the purpose for which it was Disclosed to the person, and the person notifies Lockton of any instances of which it is aware in which the confidentiality of the information is breached;

3.3 To create de-identified information in compliance with 45 C.F.R. 164.514(a)-(c). Once PHI has been de-identified, it shall no longer be considered PHI and shall not be subject to the confidentiality obligations or restrictions on Disclosure set forth in this Agreement;

3.4 To provide Data Aggregation Services on behalf of the Plan, including, without limitation, Disclosure of PHI to subcontractors, vendors and/or other third parties, as may be necessary to allow Lockton to perform the Services; to Use and store PHI in a benchmark database; and to Disclose de-identified and disassociated data for population benchmarking and normative reporting purposes.

3.5 To Use PHI to report violations of law to appropriate Federal and State authorities consistent with the Privacy Rule;

3.6 As Required by Law.

ARTICLE 4. OBLIGATIONS OF CLIENT

4.1 Client shall make all necessary amendments to Plan documents to permit Use and Disclosure of PHI by Lockton as described in this Agreement.
4.2 Client shall provide Lockton with a list of person(s) (“Designee”) who perform functions for the Plan or for the Client as Plan Sponsor to whom it is permissible for Lockton to Disclose PHI. To the extent Client has limited the amount of PHI that may be Disclosed to a Designee, Client shall notify Lockton of such limitation. Client shall immediately notify Lockton of any changes in a Designee or the extent of PHI that may be disclosed to a Designee.

4.3 Client shall provide Lockton with the Plan’s notice of privacy practices, as well as any changes to such notice. Client shall ensure that such notice of privacy practices permits the Use and Disclosure of PHI by Lockton as described in this Agreement.

4.4 Client will provide necessary authorization or instruction to the administrator of the Plan to facilitate the release of PHI to Lockton.

4.5 Client shall provide Lockton with any changes in, or revocation of, permission by an individual to Use or Disclose PHI, if such changes affect Lockton’s Use or Disclosure of PHI under this Agreement.

4.6 Client shall notify Lockton of any restriction to the Use or Disclosure of PHI that the Client has agreed to on behalf of the Plan in accordance with 45 C.F.R. 164.522.

4.7 Client shall not request Lockton Use or Disclose PHI in any manner that would not be permissible under HIPAA if done by the Plan.

4.8 Client will not Use or Disclose any information received from Lockton for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of Client.

ARTICLE 5. TERM AND TERMINATION OF THE AGREEMENT

5.1 Term. This Agreement shall be effective as of the Effective Date. This Agreement shall continue until all of the PHI provided by the Plan to Lockton, or created or received by Lockton on behalf of the Plan, is destroyed or returned to the Plan, unless otherwise terminated as described in Paragraph 5.2.

5.2 Termination for Cause. If Lockton violates any material term of this Agreement, the Client shall provide an opportunity for Lockton to cure the breach or end the violation. If Lockton does not cure the breach or end the violation within a reasonable time period or if cure is not possible, Client may immediately terminate this Agreement.

5.3 Effect of Termination.

(A) Upon termination of this Agreement, Lockton shall, if feasible, return or destroy all PHI received from the Plan, or created or received by Lockton on behalf of the Plan. This provision shall also apply to PHI that is in the possession of subcontractors, vendors and/or other third parties engaged by Lockton to assist in the provision of Services. Lockton shall retain PHI only as described in Subparagraph (B) below.
(B) Lockton shall retain only that PHI for which return or destruction is infeasible or retention is necessary for Lockton to continue its proper management and administration or to carry out its legal responsibilities. Lockton shall continue to use appropriate safeguards, comply with HIPAA, and adhere to the terms of this Agreement with respect to PHI for as long as Lockton retains the PHI.

ARTICLE 6. MISCELLANEOUS PROVISIONS

6.1 Regulatory Reference. A reference in this Agreement to a section in HIPAA or to a section of the Code of Federal Regulations means the section as in effect or as amended, and for which compliance is required.

6.2 Amendment. The Client and Lockton agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Plan to comply with the requirements of HIPAA, including the provisions of HITECH. This Agreement may be amended by the Client and Lockton by the express mutual written agreement of both parties. This Agreement contains the entire Business Associate Agreement between the parties and supersedes all other understandings and agreements, oral or written, between the parties regarding privacy of PHI.

6.3 Survival. The respective rights and obligations of Lockton under Paragraph 5.3 of this Agreement shall survive the termination of this Agreement.

6.4 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Plan and Lockton to comply with HIPAA. When a section of the Agreement calls for Lockton to respond to a request from the Plan in conjunction with a regulation specifically cited in the section, Lockton may rely on the Plan’s request as verification by the Plan that the request is made in compliance with the regulation. Lockton is not responsible for confirming that the Plan’s request is made in compliance with the specific regulation.

6.5 Indemnification. Each party to this Agreement will indemnify the other and hold it harmless against any loss, cost, damage, claim or expense (including reasonable attorney’s fees) arising from the party’s improper Use and/or Disclosure of PHI through negligence or intentional wrongdoing or from breach of this Agreement.

6.6 Governing Law. This Agreement shall be governed by HIPAA and, where not covered by HIPAA or other federal law, the laws of the State of Nebraska.

6.7 Terms. Where the context of the Agreement requires, the singular shall include the plural and the masculine gender shall include the feminine. Headings or titles of sections are for general information only and this Agreement shall not be construed by reference to such titles.

6.8 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. If any provision of this
Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision, and this Agreement shall be construed and enforced as if such provision had not been included.

6.9 **Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Lockton, or the Client and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

This Agreement is executed and effective on the Effective Date first written above.