

# Consulting Agreement

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This Consulting Agreement, hereinafter referred to as "Agreement" is between Baldwin County Commission, a political subdivision of the State of Alabama, hereinafter referred to as "Client" and Cobbs, Allen & Hall, hereinafter referred to as "Consultant" effective the last date executed below.

WHEREAS, Client wishes to obtain the assistance of Consultant with strategic benefit planning, design, funding, administration, and communication with respect to its employee benefit programs;

WHEREAS, Consultant has experience in assisting employers with designing and servicing employee benefit plans; and

WHEREAS, the parties wish to set forth their respective expectations;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the parties hereby agree as follows:

## 1. Scope of Services to be Provided by Consultant

Consultant will provide Client with consulting for the following benefit programs listed below **(Full List included in Exhibit 1):**

- Strategic Planning
- Financial / Healthcare Analysis
- Renewal
- Marketing
- Open Enrollment
- Account Management Services
- Compliance Consulting
- Health and Wellness
- Human Resources Consulting
- Communication
- Benefit Technology Resources (technology consultant)

**A. Strategic Benefit Planning.** Consultant will provide assistance in developing overall plan benchmarks and targets to ensure that the plan meets the objectives of Client and its employees.

**B. Benefit Design.** Consultant will provide recommendations to ensure that benefit designs are consistent with the strategic benchmarks and targets set forth in the strategic benefit planning process.

**C. Funding.** Consultant will advise regarding program funding alternatives, including review fee proposals, recommend budget rates, employee contribution rates, and COBRA rates.

**D. Compliance Tools & Legislative Information.** Consultant will provide informational materials on legislative developments impacting employee benefit plans, including access to online reference tools on topics such as FMLA, COBRA, HIPAA, HIPAA Privacy, and Section 125.

## **2. Term & Termination**

**A. Term.** The initial term of this Agreement is for the time period commencing on February 2, 2021 and ending February 2, 2024. Thereafter, this Agreement shall automatically renew for successive renewal terms under the same conditions as the initial term until terminated as described below.

**B. Termination.** This Agreement may be terminated by either party only as follows:

- a) Effective upon thirty (30) days advance written notice to the other party stating that such other party is in breach of any of the provisions of this Agreement, provided such breach (if able to be cured) is not cured within fifteen (15) days after the notice is received;
- b) Effective upon sixty (60) days advance written notice to the other party given with or without reason; or
- c) By mutual written agreement of the parties

## **3. Cost of Services**

*See Exhibit 2.*

## **4. Personnel**

Cobbs, Allen & Hall will assign its personnel according to the needs of Client, and according to the disciplines required to complete the appointed task in a professional manner. Cobbs, Allen & Hall retains the right to substitute personnel with reasonable cause.

## **5. Client's Responsibilities**

Client will make available such reasonable information as required for Consultant to provide the services described in this agreement. Such information will be made available as promptly as possible. Client will make timely payments of the service fees as set forth elsewhere in this Agreement.

Consultant will recommend vendors for Client that Consultant believes are suitable for client's needs. While Consultant will make recommendations to Client, Client acknowledges and agrees that Client is the sole decision maker with regard to which vendors are engaged. Client agrees that Consultant is not responsible for the services provided by any vendor or any claim against Client that may arise directly or indirectly out of Client's use of a vendor or any service provided to Client by a vendor, including, but not limited to, claims arising under the Patient Protection and Affordable Care Act, the Employee Retirement Income Security Act of 1974, as amended or the United States Internal Revenue Code of 1986, as amended, regardless of whether the claim is related to the group health insurance plan sponsored by Client.

## **6. Disclaimer**

As a part of the Compliance Consulting services provided under this Agreement, Consultant may, from time to time, supply Client with information compiled or obtained from third-party sources ("compliance information") for educational purposes and to assist Client with compliance issues. Consultant will make reasonable efforts to ensure the compliance information is complete and accurate. However, Client acknowledges and agrees that Consultant does not guarantee its completeness or accuracy.

Client understands that there is no attorney-client relationship between Client and Consultant and that none of the compliance information provided should be construed as legal advice. The Client's use or reliance upon compliance information is voluntary and should only be undertaken after an independent review by Client's own qualified legal counsel.

Neither Consultant nor its employees warrant explicitly or impliedly that the compliance information, if followed, will prevent, or serve as a defense to, any criminal, civil, regulatory, or administrative audits, investigations, penalties, claims, or liabilities.

## **7. Records and Information**

Cobbs, Allen & Hall understands and agrees to limit its use and disclosure of protected health information as described the Business Associate Agreement attached in **Exhibit 3**.

## **8. Fiduciary Responsibility**

Client acknowledges that: (i) Cobbs, Allen and Hall shall have no discretionary authority or discretionary control respecting the management of any of the employee benefit plans; and (ii) Cobbs, Allen & Hall shall exercise no authority or control with respect to management or disposition of the assets of Client benefit plans. Client agrees to notify Cobbs, Allen & Hall as soon as possible of any proposed amendments to the plans' legal documents to the extent that the amendments would affect Cobbs, Allen & Hall in the performance of its obligations under this Agreement. Client agrees to submit all information in its (or their) control reasonably necessary for Cobbs, Allen & Hall to perform the services covered by this Agreement.

## **9. Confidentiality.**

During the course of this Agreement, it is likely that Consultant will come into contact with confidential information of Client. Such confidential information may include, without limitation: (i) business and financial information, (ii) business methods and practices, (iii) technology and technological strategies, and (iv) other such information Client deems as "Confidential Information". Consultant agrees to keep in strict confidence all non-public information so long as it remains non-public, except to the extent disclosure is required by law, requested by any governmental or regulatory agency or body. Consultant agrees not to use any such confidential information disclosed to it for its own benefit, or for the benefit of any party with which the Consultant is affiliated. If this Agreement is terminated, Consultant will promptly return to Client all documents, contracts, records, or other information received by it that disclose or embody confidential information of Client.

## **10. Independent Contractor.**

By entering into this Agreement, Consultant shall not become a servant, agent, or employee of Client, but shall remain at all times an independent contractor to Client. This Agreement shall not be deemed to create any joint venture, partnership, or common enterprise between Client and Client, and the rights and obligations of the parties shall not be other than as expressly set forth herein.

## **11. Indemnification.**

Consultant agrees to defend, indemnify, and save harmless the Client and its elected officials, officers, agents, employees, successors and assigns from and against all claims, damages, losses and expenses, including reasonable attorneys' fees, for bodily injury, death, or damage to property arising from or related to the performance of the services and work set forth in this Agreement that is caused by any negligent or willful act or omission of the Consultant.

## **12. Law, Venue and Jurisdiction.**

All the provisions of this Agreement shall be governed, construed by and administered in accordance with the laws of the State of Alabama. The parties agree that proper venue for any legal action brought to enforce the terms of this Agreement shall be the Circuit Court of Baldwin County, Alabama.

## **13. Attorney's Fees.**

Notwithstanding anything contained herein to the contrary, should the County employ an attorney to enforce or interpret any of the terms and conditions of this Agreement, or to recover damages for the breach of the terms and conditions hereof, or to respond to any matter raised by another party, the County shall be entitled to recover from Consultant all reasonable costs, damages, and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith.

**14. Severability.**

If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

**15. Assignment.**

Any purported assignment of this Agreement or any right or duty accruing under this Agreement shall be void and unenforceable without the prior written consent of the other party.

**16. Entire Agreement.**

This constitutes the entire Agreement between the parties, and any other warranties or agreements are hereby superseded. Subsequent amendments to this Agreement shall only be in writing signed by both parties.

**CLIENT:**

**Baldwin County Commission**

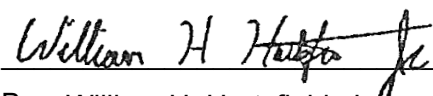
\_\_\_\_\_  
Joe Davis, III  
Chairman  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Wayne Dyess  
County Administrator  
Date: \_\_\_\_\_

**CONSULTANT:**

**Cobbs, Allen & Hall, Inc.**

  
\_\_\_\_\_  
By; William H. Hartsfield, Jr.  
Title: Executive Vice President

# Exhibit 1

## *Services / Consulting Fees*

**The following services are included**

### **Strategic Planning**

- Assist in defining and prioritizing strategic health and welfare plan objectives
- Development of one, three and five-year goals
- Assist in evaluation of administration of benefit programs
- Evaluate current vendor relationships and monitor plan performance
- Assess carrier/vendor customer service levels
- Proactively develop project action timelines
- Plan design recommendations
- Quarterly review meeting by Cobbs Allen account team
- Onsite participation in critical carrier meetings each year
- Investigation of alternative funding methods and networks

### **Financial / Healthcare Analysis**

- Review and analyze experience claim reports
- Assess current funding arrangements for appropriateness and make recommendations as needed
- Assist in developing appropriate employee contribution levels
- Evaluate current cost of benefits versus effectiveness of plan design
- Evaluate stop loss deductibles, limits and plan language
- Analyze utilization data and cost containment results of medical management
- Provide a monthly dashboard outlining plan costs, claims expenditures and any applicable large claims reimbursements
- Identify and monitor potential large claims
- Review network utilization

### **Renewal**

- Request renewals 180 days in advance of renewal
- Analyze and negotiate renewals with vendors
- Review vendor renewal methodology, experience data and assumptions for accuracy
- Develop and present alternative plan designs and provisions with associated financial impact
- Provide renewal analysis and recommended alternatives including financial projections
- Coordinate vendor meeting participation

### **Marketing**

- Develop plan specification based on feedback from strategic planning meeting
- Jointly determine list of vendors best suited to meet plan goals and objectives
- Perform pre-marketing evaluation of census data, network service areas and administrative needs
- Evaluate carrier client support services
- Review vendor financial ratings
- Perform analysis and comparison of plan features and costs
- Assist in the scheduling of selected finalist site visits as needed
- Assist in conducting finalist negotiations
- Provide a report with proposed carrier and plan design
- Assist in the notification of all bidders as to the outcome

### **Open Enrollment**

- Provide guidance on delivering a comprehensive communication strategy
- Assist developing / creating the production of employee communications
- Coordinate vendor sponsored communication material
- Coordinate information and communication campaign between enrollment vendor and employer, if applicable
- CA account team will assist employer with questions regarding benefits

### **Account Management Services**

- Serve as employer's first point of contact for all issues involving insurance companies / vendors
- Monitor administrative process and assist in the resolution of issues
- Review contracts, certificates and benefit booklets to ensure fees, benefits, rates and eligibility are as agreed to during the renewal/marketing process
- Act as an employer advocate in the resolution of ongoing claims issues
- Assist with billing issues
- Coordinate changes in legal documents (contracts and policies)
- Provide implementation support for carrier / vendor changes
- Regular service calls by Client Executive

### **Compliance**

- Assist with compliance with Federal Laws and Regulations
- Provide timely guidance related to Healthcare Reform (PPACA)
- Assistance with required employee communication
- Access to Employment Law attorneys for escalated issues
- Monitoring of laws impacting Employee Benefits and Human Resources such as ERISA, COBRA, HIPAA and IRS Code
- Provide access to periodic webcasts and compliance sessions
- Provide access to self-service compliance information via *ThinkHR* Portal
- *Compliance Corner* email updates with the latest in compliance and legislative issues

### **Health and Wellness**

- Provide Health Management Consulting by CA internal health management team
- Assist in coordination of wellness programs and meetings
- Assist in implementation of wellness programs
- Create educational programs
- Assistance in communicating wellness initiatives
- Provide suggestions for incentive programs
- Assist with coordination of Health Risk Assessments and Biometric Screenings if needed
- Provide guidance with health fairs as needed

### **Human Resources**

- Provide Human Resource Consulting by Cobbs Allen internal HR management team
- Provide assistance with HR structural, administrative and organizational issues
- Development and delivery of training modules, including Harassment, Supervisor, Drug-Free Workplace, Discipline and Discharge, FMLA, FLSA and other programs as needed
- Access to job description templates
- Salary Center – access to national compensation database
- Ergonomics assessment and training
- Employee Handbook Review
- Serve as “outsourced HR helpdesk” for general HR questions
- Employment Policy – Review, revisions and development

### **Communication**

- Development of employee engagement strategies
- Customized communication materials to aid in educating the workforce
- Communication Formats:
  - Benefits Guides
  - Benefit Statements
  - Calendars
  - Posters
  - Postcards
  - Employee Surveys

**BTR consulting and investigative services are included.  
Actual costs of systems are not included**

### **Benefit Technology Resources**

- Review your existing HR technology configuration to ensure compliance with health care reform
- Review current HR technologies and workflows to ascertain efficiencies and gaps to maximum existing products
- Review current HR technology pricing to ensure competitiveness
- Conduct calls with your current technology providers to assist with any processing concerns or problems
- Assist with selecting the right HR technology for payroll, time keeping, HRIS, benefits administration, performance management, recruitment/applicant tracking and onboarding
- Draft, manage and oversee the RFP selection process for a new provider

## **Exhibit 2**

### ***Cost of Services***

Cobbs, Allen & Hall commission and/or fees are based upon time expended by specific individuals as well as the value-added resources that will be utilized by Client. The compensation arrangement begins on the commencement of the agreement. The compensation arrangement between Cobbs, Allen & Hall and Client is outlined below.

| Description of service or product | Fee or commission |
|-----------------------------------|-------------------|
| Medical Stop Loss – Partners MGU  | 6% Commission     |
| Vision - MetLife                  | 10% Commission    |
| Group Life/AD&D - MetLife         | 15% Commission    |
| Voluntary Life/AD&D - MetLife     | 15% Commission    |
| Short-Term Disability - MetLife   | 15% Commission    |
| Long-Term Disability - MetLife    | 15% Commission    |

#### **Billing Terms:**

Cobbs, Allen & Hall ancillary commission (life, voluntary life, short term disability, long term disability and vision) will be capped at \$75,000 per contract year. Cobbs, Allen & Hall may receive contingency payments, overrides and/or bonuses from carriers that are not expensed to the client.

Additional programs and services will be provided on a project basis for an additional fee or commission and shall be undertaken upon mutual agreement between Consultant and Client. Consultant reserves the right to pass through any mutually agreed upon reasonable costs related to the printing of any employee communication materials.

### **EXHIBIT 3**

## **BUSINESS ASSOCIATE AGREEMENT**

This **BUSINESS ASSOCIATE AGREEMENT** (the “*Agreement*”), is entered into as of the 2nd day of February, 2021 (the “*Effective Date*”) by and between Baldwin County Commission, a political subdivision of the State of Alabama (the “*County*”), on behalf of the Baldwin County Commission Health Plan (the “*Plan*”), and Cobbs, Allen & Hall, Inc. (“*Business Associate*,” and with the County, each a “*Party*” and together the “*Parties*”). This Agreement supersedes and replaces any prior Business Associate Agreements and related amendments thereto between the Parties.

### **RECITALS**

**WHEREAS**, the County maintains certain health care benefit plans that provide health plan benefits to certain of the County’s employees and their eligible dependents, if any;

**WHEREAS**, Business Associate performs or will perform certain services for the Plan;

**WHEREAS**, in the course of performing services for the Plan, Business Associate will have access to, create, maintain, and/or otherwise use and/or disclose Protected Health Information (as defined below); and

**WHEREAS**, the Parties desire to set forth their respective obligations with respect to Protected Health Information (as defined below) pursuant to the Health Insurance Portability and Accountability Act of 1996, as it may be amended from time to time, and the regulations promulgated at 45 C.F.R. Parts 160-164 (collectively, “*HIPAA*”);

**NOW THEREFORE**, the County and Business Associate agree as follows:

#### **1. Definitions**

The following terms have the following meaning when used in this Agreement:

- a. **Breach** means that term as defined in 45 C.F.R. § 164.402.
- b. **Designated Record Set** means that term as defined in 45 C.F.R. § 164.501.
- c. **Electronic Protected Health Information** means Protected Health Information that is transmitted or maintained in electronic media, including, but not limited to, hard drives, disks, on the internet, or on an intranet.
- d. **HHS** means the Department of Health and Human Services.
- e. **Individual** means that term as defined in 45 C.F.R. § 160.103, and includes a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

- f. **Privacy Rule** means the privacy requirements in HIPAA, as set forth in 45 C.F.R. Part 160, and Subparts A and E of 45 C.F.R. Part 164.
- g. **Protected Health Information** means that term as defined in 45 C.F.R. § 160.103, except limited to the information created, received or maintained by Business Associate from or on behalf of the Plan.
- h. **Required by Law** means that term as defined in 45 C.F.R. § 164.103.
- i. **Secretary** means the Secretary of the Department of Health and Human Services or his/her designee.
- j. **Security Incident** means that term as defined in 45 C.F.R. § 164.304.
- k. **Security Rule** means the security requirements set forth in HIPAA, as set forth in 45 C.F.R. Part 160, and Subparts A and C of 45 C.F.R. Part 164.
- l. **Subcontractor** means that term as defined in 45 C.F.R. § 160.103, except limited to any such person or entity that receives, maintains, creates or transmits Protected Health Information for Business Associate.
- m. **Transaction** means that term as defined in 45 C.F.R. § 160.103.
- n. **Unsecured Protected Health Information** means that term as defined in 45 C.F.R. § 164.402.

Any capitalized term not specifically defined herein will have the same meaning as set forth in 45 C.F.R. Parts 160 and 164, where applicable. The terms “use,” “disclose” and “discovery,” or derivations thereof, although not capitalized, shall also have the meanings set forth in HIPAA.

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

Business Associate will:

- a. Not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required by Law.
- b. Document and use appropriate administrative, technical and physical safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic Protected Health Information, to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement or in a services agreement entered into between the Parties.
- c. Notify the County in writing within five (5) business days of becoming aware of (i) any use or disclosure of Protected Health Information by Business Associate or any Subcontractor that is contrary to this Agreement including, without limitation, any Breach of Unsecured Protected Health Information; or (ii) any Security Incident. If there is a Breach of Unsecured Protected Health Information, Business Associate will:

- i. Notify the County in writing of the Breach without unreasonable delay, and in no event more than five (5) business days after discovery of the Breach, and provide (i) a list of all Individuals affected by the Breach, and (ii) any other available information that the Plan are required to include in notifications to such Individuals pursuant to 45 C.F.R. § 164.404(c). In the event any such information is not available when the County is notified of the Breach, Business Associate will provide such information to the County as soon as it becomes available;
- ii. Cooperate with the County to notify, at Business Associate's expense: (i) Individuals whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed; (ii) the media, as required pursuant to 45 C.F.R. § 164.406; and (iii) the Secretary, as required by 45 C.F.R. § 164.408(b), if the legal requirements for media or HHS notification are triggered by the circumstances of such Breach, *provided* that Business Associate will not initiate any such notifications without the County's express written approval; and
- iii. Pay all costs involved in fulfilling the notification requirements set forth in this Section 2(c) and/or otherwise applicable to Business Associate or the Plan pursuant to 45 C.F.R. § 164.404, subpart D, whether such costs are incurred initially by Business Associate, any Subcontractor, the County or the Plan.
- d. Establish procedures for mitigating, and follow those procedures and so mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate or by any Subcontractor that is contrary to this Agreement.
- e. Ensure that any Subcontractor that creates, receives, maintains or transmits Protected Health Information on behalf of Business Associate enters into a written agreement whereby the Subcontractor agrees to the same restrictions, conditions and requirements that apply to Business Associate with respect to such information, in accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 45 C.F.R. § 164.308(b)(2).
- f. Provide, in the manner reasonably requested by the Plan and within ten (10) calendar days of receiving a request from the Plan or an Individual, access to Protected Health Information in a Designated Record Set, to the Plan or, as directed by the Plan, to an Individual, in order for the Plan to fulfill its obligations under 45 C.F.R. § 164.524 to provide access and copies of Protected Health Information to an Individual.
- g. Make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed by the Plan pursuant to 45 C.F.R. § 164.526, within fifteen (15) calendar days of receiving a request from the Plan or an Individual or take other measures to satisfy the Plan's obligations pursuant to 45 C.F.R. § 164.526.

- h. Maintain and make available to the Plan or, as directed by the Plan, to an Individual, within fifteen (15) calendar days of the Plan's request, the information required for the Plan to satisfy their obligations pursuant to 45 C.F.R. § 164.528 to respond to a request for an accounting of disclosures of Protected Health Information.
- i. Notify the Plan within five (5) business days of receiving, directly from an Individual, a request for (i) access to Protected Health Information pursuant to 45 C.F.R. § 164.524; (ii) amendment to Protected Health Information pursuant to 45 C.F.R. § 164.526; or (iii) an accounting of disclosures of Protected Health Information pursuant to 45 C.F.R. § 164.528.
- j. Comply with the requirements of Subpart E of 45 C.F.R. Part 164 that are applicable to the Plan, if Business Associate is to carry out one or more of the Plan's obligations under Subpart E.
- k. In the event Business Associate transmits or receives a Transaction on behalf of the Plan, Business Associate will comply with all applicable provisions of the HIPAA standards for electronic transactions and code sets (the "*EDI Standards*"). Business Associate will also ensure that any Subcontractor that transmits or receives a Transaction on its behalf does so in accordance with the EDI Standards.
- l. Make its internal practices, books, and records available to the Secretary or the Plan for purposes of a review and assessment of Business Associate's or the Plan's compliance with HIPAA; and notify the County within five (5) business days of receiving a request for any such materials directly from HHS.
- m. Not engage in the Sale of Protected Health Information or otherwise receive direct or indirect remuneration in exchange for the Protected Health Information of an Individual, unless Business Associate or the Plan has obtained a valid authorization from the Individual, consistent with the requirements under 45 C.F.R. § 164.508.

### **3. Permitted Uses and Disclosures by Business Associate**

- a. Business Associate may only use or disclose Protected Health Information as necessary to perform functions, activities, or services for, or on behalf of, the Plan, provided that such use or disclosure would not violate the Privacy Rule if done by the Plan or the minimum necessary policies and procedures of the Plan, or as otherwise expressly provided in this Section 3.
- b. Business Associate may use Protected Health Information to de-identify the Protected Health Information in accordance with 45 C.F.R. § 164.514(a) – (c); provided, however, that Business Associate may use the de-identified information only if and to the extent expressly permitted in this Section 3.
- c. Business Associate may use or disclose Protected Health Information as Required by Law.

- d. Any use or disclosure of Protected Health Information by Business Associate will be in compliance with the minimum necessary policies and procedures of the Plan, and with the minimum necessary requirements of HIPAA.
- e. Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by the Plan, except that Business Associate may do the following:
  - i. Use Protected Health Information for the proper management and administration of Business Associate, or to carry out the legal responsibilities of Business Associate.
  - ii. Disclose Protected Health Information for the proper management and administration of Business Associate, or to carry out the legal responsibilities of Business Associate, provided that the disclosures are Required by Law, or Business Associate obtains reasonable written assurances from the person or entity receiving the information (each a "*Recipient*") that the information will remain confidential, and be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the Recipient; and the Recipient notifies the Business Associate of any instances of which the Recipient is aware in which the confidentiality of the information has been breached.
  - iii. Use Protected Health Information to provide data aggregation services as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B) that relate to the Health Care Operations of the Plan.
- f. Business Associate may use Protected Health Information to report violations of law to the appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1).
- g. Business Associate will not transfer Protected Health Information outside the United States without the prior written consent of the the County. In this context, a "transfer" outside the United States occurs if Business Associate's workforce members, agents, or Subcontractors physically located outside the United States are able to access, use, or disclose Protected Health Information.

#### 4. **Obligations of the Plan**

The Plan will:

- a. Notify Business Associate of any limitations in the Plan's Notice of Privacy Practices under 45 C.F.R. § 164.520, to the extent any such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- b. Notify Business Associate of any changes in, or revocation of, the permission by an Individual to use or disclose his or her Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

- c. Notify Business Associate of any restriction on the use or disclosure of Protected Health Information that the Plan has agreed to or are required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.
- d. Not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 C.F.R. Part 164 if done by the Plan, except for uses and disclosures of Protected Health Information by Business Associate in accordance with Section 3(e) above.

## **5. Term and Termination**

- a. The term of this Agreement begins on the Effective Date and ends on the date that any services agreement between the parties terminates, or if earlier, the date that the County terminates this Agreement for cause pursuant to Section 5(b) below.
- b. The County may terminate this Agreement for cause effective as of any date designated by the the County in a notice to Business Associate upon a determination by the County that Business Associate has breached a term of this Agreement. The County may, in its discretion, allow Business Associate a specified period of time to cure the breach, and upon a cure satisfactory to the County, elect not to terminate the Agreement on account of the breach.
- c. Upon termination of this Agreement for any reason, Business Associate will (and will ensure that its Subcontractors that have had access to Protected Health Information will):
  - i. Retain only the Protected Health Information that is necessary for Business Associate or a Subcontractor to continue its proper management and administration or to carry out its legal responsibilities;
  - ii. Return to the Plan or to the Plan's designee, or upon the Plan's prior written agreement, destroy (and certify in writing to the Plan that it has destroyed) any remaining Protected Health Information that Business Associate or any of its Subcontractors maintain in any form;
  - iii. Continue to use appropriate administrative, technical and physical safeguards, and to comply with Subpart C of 45 C.F.R. Part 164, with respect to any Electronic Protected Health Information so as to prevent use or disclosure of the Electronic Protected Health Information other than as specified in this Section 5(c) for as long as Business Associate or any Subcontractor retains the Electronic Protected Health Information;
  - iv. Not use or disclose the Protected Health Information retained by Business Associate or by any Subcontractor other than for the purposes for which such Protected Health Information was retained, and subject to all the conditions and limitations set forth in Sections 2 and 3 above that applied prior to termination of the Agreement;

- v. Return to the Plan or, upon the Plan's prior written agreement, destroy (and certify in writing to the Plan that it has destroyed) the Protected Health Information retained by Business Associate or by any Subcontractor as of the date such Protected Health Information is not needed by Business Associate or the Subcontractor for its proper management and administration or to carry out its legal responsibilities.

## 6. Miscellaneous

- a. **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule, the Security Rule, or to any other regulation promulgated under HIPAA means the section as in effect or as amended.
- b. **Survival.** Sections 2, 3, 5(c) and 6 of this Agreement shall survive the termination of this Agreement.
- c. **Interpretation.** Any ambiguity in this Agreement will be resolved to permit the Plan to comply with the Privacy Rule, Security Rule and other provisions of HIPAA.
- d. **Effect.** This Agreement shall be binding upon, and shall inure to the benefit of, the County, the Plan and Business Associate, and their respective successors, assigns, administrators and other legal representatives.
- 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 County, the Plan and Business Associate, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- f. **Independent Contractors.** Nothing contained herein shall be deemed or construed by the Parties or by any third party to create a relationship of employer and employee, principal and agent, or joint venture of the Parties, it being understood and agreed that Business Associate provides services to the County and the Plan hereunder as an independent contractor; Business Associate retains full and complete control over its performance under this Agreement; and the County and the Plan have no authority to direct or control Business Associate's conduct or activities in connection with this Agreement.
- g. **Governing Law.** The construction, interpretation and performance of this Agreement and all transactions under this Agreement shall be governed and enforced pursuant to the laws of the State of Alabama, except as such laws are preempted by any provision of federal law, including by ERISA or HIPAA. Any action or proceeding arising out of or relating to this Agreement shall be brought and tried exclusively in a the Circuit Court of Baldwin County, Alabama and in no other court or venue.
- h. **Indemnification.** Business Associate will, during and after the term of this Agreement, hold the County, the Plan, and their respective trustees, officers, directors, employees, agents and affiliates, harmless from, and defend and indemnify each of them against, any and all claims, losses, liabilities, penalties,

finest, costs, damages and expenses, including reasonable attorneys' fees and costs, incurred by, imposed upon or asserted against any of them as a result, directly or indirectly, of Business Associate's or any of its Subcontractors', directors', officers', employees' or agents' breach of this Agreement, HIPAA, the Privacy Rule, the Security Rule or the breach notification rule, 45 C.F.R. Part 160 and Subpart D of 45 C.F.R. Part 164.

- i. **Severability.** In the event any provision of this Agreement is rendered invalid or unenforceable under any new or existing law or regulation or declared null and void by any court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect if they reasonably can be given effect.
- j. **Notices.** All notices to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed given five (5) business days after being sent by certified mail, return receipt requested, postage prepaid or one (1) business day after being sent by reputable overnight mail delivery to the other Party, at the address set forth below or at such other address as a Party may designate from time to time.

If to the County, notice shall be sent to:

**Baldwin County Commission**  
**312 Courthouse Square, Suite 17**  
**Bay Minette, AL 36507**  
**Attention: Deidra B. Hanak**

If to the Business Associate, notice shall be sent to:

**Cobbs, Allen & Hall, Inc.**  
**115 Office Park Drive**  
**Birmingham, AL 35223**  
**Attention: Grantland Rice, III**

- k. **Amendment.** The Parties 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.
- l. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies thereof shall be deemed to be originals.
- m. **Attorney's Fees.** Notwithstanding anything contained herein to the contrary, should the County employ an attorney or attorneys to enforce any of the terms and conditions hereof, or to recover damages for the breach of the terms and conditions hereof, or to respond to any matter raised by another party, the County shall be entitled to recover from Business Associate all reasonable costs, damages, and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith.

- n. **Assignment.** Any purported assignment of this Agreement or any right or duty accruing under this Agreement shall be void and unenforceable without the prior written consent of the other party.

**IN WITNESS WHEREOF**, the Parties have executed this Business Associate Agreement as of the Effective Date.

**COUNTY:**

**Baldwin County Commission**

\_\_\_\_\_  
Joe Davis, III

Chairman

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

ATTEST:

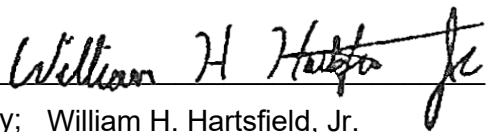
\_\_\_\_\_  
Wayne Dyess

County Administrator

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

**BUSINESS ASSOCIATE:**

**Cobbs, Allen & Hall, Inc.**

\_\_\_\_\_  


By: William H. Hartsfield, Jr.

Title: Executive Vice President