

## Part 2

# Plan Adoption Documents

Items listed in **bolded blue text** and marked with an asterisk (\*) are documents that must be completed and/or signed by an authorized officer of the Plan Sponsor. Read **Plan Adoption Instructions** on page **###** for more details.

<b>Plan Adoption Instructions</b> .....	<b>###</b>
<b>Plan Sponsor Contact Information Form*</b> .....	<b>###</b>
<b>Plan Adoption Agreement*</b> .....	<b>###</b>
<b>Plan Design Elections and Administration</b>	
<b>Addendum A: Plan Design Elections*</b> .....	<b>###</b>
<b>Addendum B: Participant Account Elections*</b> .....	<b>###</b>
Addendum C: Administrative Fees Schedule, Plan Representatives, and Plan Administration Support Services .....	<b>###</b>
<b>Investment Management</b>	
Addendum D: Investment Management Services .....	<b>###</b>
<b>HIPAA</b>	
<b>Addendum E: HIPAA Business Associate Agreement*</b> .....	<b>###</b>

\*Must be completed and/or signed by an authorized officer of the Plan Sponsor.

Capitalized terms used throughout this set of **Plan Adoption** documents and not otherwise defined herein shall have the meaning given to such terms in the other **Plan Documents**, as amended from time to time. The **Plan Documents** governing the terms and conditions of plan coverage are provided separately.

In addition to this set of **Plan Adoption** documents, you must also execute the **Trust Adoption** documents.

## Plan Adoption Instructions

Please carefully follow the instructions below. All actions are required unless otherwise noted.

For your convenience, all documents are designed to be executed electronically, including the signature pages. Just follow the prompts.

Your completed Plan Adoption documents will be reviewed and countersigned by Gallagher Benefit Services, Inc. (GBS) as the HRA Service Manager. We will maintain an electronic countersigned copy and email a duplicate copy to you or your designated contact. You, as Plan Sponsor, should keep all executed documents on file.

- Page ###: **Provide your contact information:** Complete the **Plan Sponsor Contact Information** form.
- Page ###: **Establish your Plan:** Sign the **Plan Adoption Agreement**.
- Page ###: **Design your Plan:** Make your **Plan Design Elections** (Addendum A).
- Page ###: **Define your Participant Account types:** Make your **Participant Account Elections** (Addendum B).
- Page ###: **Agree to terms regarding the use and/or disclosure of Protected Health Information:** Complete and sign the **HIPAA Business Associate Agreement** (Addendum E).



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## ADDENDUM A

# Plan Design Elections

## HealthInvest HRA

### PLAN DESIGN ELECTIONS

**Plan Sponsor agrees to deliver to the HRA Service Manager written amendments to this Addendum A from time to time as employee groups to be covered by the Plan and eligibility requirements change.**

1. **Effective Date.** The Plan Effective Date for the Plan shall be \_\_\_\_\_.

2. **Plan Year.** For regulatory reporting and compliance under federal law, the HealthInvest HRA Plan Year is based upon the calendar year. Depending on the date of adoption, the first Plan Year for certain Plans may be less than 12 months.

3. **Employer Participation Agreements.** For multiple employer or multi-employer trusts only. (*check one only*)

**Not Applicable.** All Participating Employers agree to the same Plan Design Elections and Participant Account Elections contained herein.

**Applies.** See individual Employer Participation Agreements for unique Plan Design Elections and Participant Account Elections.

4. **HRA Survivor Benefit.** (*check one only*)

For most HRA Plans, the Standard HRA Survivor Benefit will apply, meaning that in the event of the death of a participant, his or her HRA account will transfer only to the surviving dependents of that participant (including the spouse). Under an Extended Survivor Benefit, other non-dependent heirs may inherit the HRA account of a participant in accordance with Plan rules, so long as the HRA Plan meets the conditions described below under Section 4(b). When the Extended HRA Survivor Benefit applies, the rules governing that extended benefit will be available to Participating Employers and/or Plan Sponsors on the online portal.

(a)  **Standard HRA Survivor Benefit.**

(b)  **Extended HRA Survivor Benefit.** By checking this box, the Plan Sponsor is certifying that its HRA Plan meets the qualification requirements outlined under the Internal Revenue Code Section 105(j), including: (1) the Plan previously provided for reimbursements of health care expenses to deceased employees' non-dependent heirs or beneficiaries on or before January 1, 2008; and (2) the Trust utilized by the Plan Sponsor is either a trust authorized by the State legislature or a trust that received a favorable IRS ruling as a Section 115 or 501(c)(9) trust under the Internal Revenue Code.

5. **Transfers.** (check one only)

- No transfer of assets from another plan is contemplated.
- The following transfer of assets from one or more other plans is contemplated (*describe*):

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**Transfers of assets from other plans shall be on terms acceptable to, and pursuant to rules, policies and procedures established by, the HRA Service Manager.**

6. **Wrap Documents.** (check one only)

- The Plan Sponsor ***does not elect*** to have Wrap Documents incorporated into this Plan Adoption Agreement.
- The Plan Sponsor ***elects*** to have the Wrap Documents attached to this Addendum A and incorporated into this Plan Adoption Agreement,

7. **Employer Account(s).** (check one only)

An Employer Account can be used to hold assets to be applied to future obligations or contributions of the employer and/or to offset other post-employment benefits (OPEB) liabilities resulting from Governmental Accounting Standards Board Statement No. 74/75 (GASB 74/75) accounting rules. An Employer Account, if established, can also be used for the purpose of accepting Participant Account forfeitures due to a Participant's death, failure to meet vesting requirements, if any, and other terms and conditions of the Plan.

If an Employer Account is elected, the funds held therein will be invested the Vanguard Federal Money Market Investor until the Plan Sponsor elects otherwise. Once the Plan Sponsor established online portal access, an investment allocation change can be made up to once per calendar month. Additionally, an Employer Account Fee may apply, as described in the Administrative Fees Schedule of Addendum C.

- Plan Sponsor is establishing one or more Employer Accounts for itself or establishing one or more Employer Accounts as elected by each Participating Employer.
- Plan Sponsor is not establishing any Employer Account.

8. **Limited Reversion and Revocability Elections.**<sup>1</sup> No Plan assets (other than contributions made by mistake of fact or administrative error) shall be returned to the Plan Sponsor except upon satisfaction of all liabilities to provide benefits under the Plan and in the following additional circumstances. (check one only or check "None of the Above")

- Plan assets allocated to any Employer Account may be returned to the Plan Sponsor or Participating Employer, as applicable, at any time, to the extent permitted by the applicable Participating Trust. (If this option is selected, Plan assets may not be counted as employer assets for meeting the requirements of GASB 74/75.)
- All Plan assets, or the portion thereof allocable to a designated class of Participants, may be returned to the Plan Sponsor for the purpose of providing health benefits to Participants, or such class of Participants, under a successor health plan, to the extent permitted by the applicable Participating Trust.
- All forfeited Plan assets, or the portion thereof allocable to a designated class of Participants, may be returned to the Plan Sponsor at any time to the extent permitted by the applicable Participating Trust.
- Other (specify): \_\_\_\_\_
- None of the Above.

The Plan Sponsor certifies that the reversion and revocability elections above are permitted by the Participating Trust and the Plan Sponsor assumes, and holds the Master Trustee and HRA Service Manager harmless from, all liability, including adverse tax consequences associated with such elections.

9. **Participant Account Types.** The Plan Sponsor shall designate the description, eligibility, benefits, and other approved terms and conditions for one or more Participant Account types to be established for each employee group of Participating Employer as described in Addendum B.

10. **Additional Instructions or Plan Limitations.** Please specify below any other specific instructions or Plan limitations. (Subject to acceptance of such terms by the HRA Service Manager)

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<sup>1</sup> Reversion elections are not permitted for plan assets funded through a VEBA trust and may not be permitted by the terms of other types of trust instruments. Plan Sponsors should consult with legal counsel.



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## ADDENDUM B

# Participant Account Elections

In this Addendum, follow the instructions to make elections for each Participant Account Type.

## HealthInvest HRA

### INSTRUCTIONS FOR PARTICIPANT ACCOUNT ELECTIONS

This Addendum B allows a Plan Sponsor to:

- Establish one or more Participant Account types
- Indicate which eligible Employee group(s) will be receiving contributions to one or more Participant Account types
- Provide a brief description for each Participant Account type as you would want it to appear on Participant Communication. Descriptions are usually based on either the type of contribution, type of coverage, or eligible employee group. For example: Monthly Contributions (In-service Benefits); Annual Contributions (Post-separation Benefits Subject to Vesting); Separation Pay; Executive Premium-only Coverage; Administrators; Professional Staff; Support Staff; etc.
- Choose the benefits for each Participant Account type

The number of Participant Account types a Plan Sponsor establishes may be dependent upon its chosen or negotiated Plan design, compliance with certain Affordable Care Act (ACA) rules, or compliance with applicable nondiscrimination rules when making contributions on behalf of highly compensated individuals (HCIs), etc.

#### **Participant Account Types.**

The In-service HRA Plan pays benefits (subject to vesting requirements) while the employee is actively employed and continuing after retirement or other separation from service from the Employer. The Post-separation HRA Plan pays benefits only after eligible Employees meet all vesting requirements and also retire or otherwise separate from service from the Employer. The Post-separation, premium-only plan design is generally used to provide additional benefits to highly compensated employees and pays benefits only for qualified premiums incurred after eligible Employees meet all vesting requirements and also retire or otherwise separate from service from the Employer.

**Multiple Account Options.** It is possible that one or more eligible Employee groups (or certain eligible Employees within the same Employee group) may receive contributions to more than one Participant Account type. For example, you may make a \$100 per month contribution into the In-service HRA Plan for all eligible employees and an additional \$75 dollars per month for HCIs into the Post-separation HRA Plan that is limited to executive premium-only benefits and subject to vesting.

On the Enrollment File for each eligible group, the Plan Sponsor or Participating Employer must specify the one or more Participant Account types into which the Participants are enrolling. The Plan Sponsor must also submit separate or combined contribution remittance reports for each Participant Account type into which contributions are being made based upon the number (division code) assigned to each Participant Account type by the HRA Service Manager (e.g., “001”, “002” or “003”, etc.).

**Default Post-separation Contributions.** For contributions to the In-service HRA Plan for a particular Employee group, some Employees may not meet the ACA integration requirements that require the Employee to be covered by a group health plan at the time the contribution is credited. This will result in some eligible Employees within the same group receiving contributions into the In-service HRA Plan and other eligible Employees receiving contributions into the Post-separation HRA Plan, which is not subject to the ACA integration requirements.

**Example:** The Plan Sponsor or Participating Employer intends to make a contribution of \$100 per month into the In-service HRA Plans with 100% vesting. From time to time, if any Employees within that group do not meet the ACA integration requirements under any of the In-service HRA Plans, applicable law requires that the \$100 monthly contribution for these Employees must be directed into a separate Participant Account type with 100% vesting under the Post-separation HRA Plan. **These contributions are referred to as “Default Post-separation Contributions.”** This Default Post-separation Participant Account type will be automatically established by the HRA Service Manager to accommodate Default Post-separation Contributions on behalf of any Employees who do not meet the ACA integration requirements from time to time.

## HealthInvest HRA

### PARTICIPANT ACCOUNT ELECTIONS

*If establishing more than six Participant Account Types, please complete and attach additional copies of this form.*

- 1. Establishment of Participant Account Type(s).** Participant Account type number (division code) will be assigned by the HRA Service Manager and communicated to the Plan Sponsor or Participating Employer.

**Participant Account Type Description:** Insert a brief description of your choosing, as you would want it to appear on Participant Communication.

**Eligible Employee Group(s):** List each Employee group eligible for contributions to the respective Participant Account Type.

**Benefits** *(Check only one Benefits option for each Participant Account Type):* Do not elect “Post-separation HRA Plan coverage” below if the only contributions to the Post-separation HRA Plan will be “Default Post-separation Contributions” (defined in Item 6 of Addendum B-1 Plan Design Elections). If you choose any of the “In-service HRA Plan coverage” options below, a separate, corresponding “Post-separation HRA plan coverage” Participant Account type for “Default Post-separation Contributions” (defined in Item 6 above) will be automatically set up on behalf of eligible employees, if any, who do not meet the integration requirements under any of the In-service HRA Plan versions.

Participant Account Type Description	Eligible Employee Group(s)	Benefits (type of coverage)					
		Post-separation HRA Plan Coverage (see additional election information required in #2 below)				In-service HRA Plan Coverage	
		100% Vested	Subject to Vesting	Premium-only 100% Vested	Premium-only Subject to Vesting	100% Vested	Subject to Vesting
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. **Post-separation HRA Plan Coverage**<sup>1</sup>. For Post-separation HRA Plan coverage, please select whether this coverage should be administered as:

**True post-separation coverage only.** Participants are not eligible for reimbursement of any expenses prior to separation from service; or

**Post-separation coverage with limited in-service coverage prior to separation.** Participants are eligible for reimbursement of expenses and premiums for dental, vision, and qualified long-term care (“Excepted Benefits”) prior to separation from service.

3. **Claims Eligibility Date.** The Claims Eligibility Date for Participant Account Types with Post-separation HRA Plan Coverage shall be the Participant’s date of retirement or separation from employment. The Claims Eligibility Date for Participant Account Types with In-service HRA Plan Coverage shall be the Participant Eligibility Date or, if subject to vesting, the date after the Participant Eligibility Date on which the applicable vesting requirements have been met by the Participant.

4. **Vesting.** Describe below, or in an attachment to this Addendum B-2, the vesting policy for each eligible employee group subject to vesting, if any.

*Please note that Plan Sponsors and Participating Employers are responsible for tracking Employee vesting and notifying the HRA Service Manager or its designee of vested amounts when Employees separate or as applicable.*

5. **Forfeitures.** If the balance in any Participant Account is forfeited in accordance with the terms of the Plan, such account balance will be transferred, reallocated, or re-contributed in accordance with written directions of the Plan Sponsor or Participating Employer, as applicable.

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<sup>1</sup> **NOTE:** For Post-separation HRA Coverage, if a participant is re-employed with the Employer after his or her original separation from service, IRS rules require his or her eligibility for claims be limited to reimbursement of expenses and premiums for dental, vision, and qualified long-term care (“Excepted Benefits”).



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## ADDENDUM C

# Administrative Fee Schedule, Plan Representatives, and Plan Administration Support Services

**HealthInvest HRA Plan**

**ADMINISTRATIVE FEES SCHEDULE**

The following schedule of administrative fees will apply. Administrative fees include expenses for routine operation, administration, and regulatory compliance for the Plan.

1. **Monthly Per Participant Account Fee:**

This amount will be deducted once per calendar month from Participant Accounts unless Employer elects below to pay this fee.

Check here if Employer will pay. Monthly account fees will be invoiced to Employer monthly. Invoiced amounts shall be due and payable by Employer within 30 days.

2. **Annualized Participant Account Fee:**

This fee will be prorated and deducted from Participant Accounts on a daily basis at a rate of 1/365 of the listed annualized fee unless Employer elects below to pay this fee.

Check here if Employer will pay. Annualized participant fees will be calculated and invoiced to Employer monthly. Invoiced amounts shall be due and payable by Employer within 30 days.

3. **Employer Set-up Fee:**

Employer will be invoiced at time of Plan adoption. Invoiced amounts shall be due and payable by Employer within 30 days.

4. **Employer Annual Fee:**

Employer will be invoiced beginning in year two and each year thereafter. Invoiced amounts shall be due and payable by Employer within 30 days.

5. **Trust-level Expenses:**

Employer will be invoiced beginning in year two and each year thereafter. Invoiced amounts shall be due and payable by Employer within 30 days.

Expenses related to the overall operation of the Plan Sponsor Trust on behalf of all participating employers, including, but not limited to, annual audit, completion and filing of IRS Form 990 return, legal fees, fiduciary liability insurance or fidelity bond(s)

purchased as permitted by the Plan Documents, and other expenses incurred as part of the administration of the Trust, and split in accordance with the Plan Documents.

Check here if Employer will pay.

Check here if Trust-level Expenses should be split equally among Employer's Participant Accounts.

**6. Termination/Transfer Fee:**

Employer will be invoiced at the time of termination/transfer. Invoiced amounts shall be due and payable by Employer within 30 days.

**7. Annual Patient-Centered Outcomes Research Institute (PCORI) Fee:**

The PCORI Fee is an annual per-participant fee assessed by the federal government as required under federal healthcare reform regulations. The PCORI fee increases each year (through Plan Years beginning in 2029) based on increase in the projected per capita amount of national health expenditures.

Unless the Plan Sponsor elects otherwise, for non-ERISA Plans that are subject to this fee, the account of any Participant who is eligible to file claims will be charged a prorated portion of this annual fee once every three months during the Plan Year beginning in 2017 through the Plan Year beginning in 2029, or as otherwise mandated by federal law.

For ERISA-governed plans that are subject to this fee or if elected by the Plan Sponsor, the fee will be calculated by the HRA Service Manager, in consultation with the Plan Sponsor, and payable by the Plan Sponsor. The fee applies to claims eligible participants only and does not include their spouses and dependents. The amounts collected will be remitted to the federal government to fund patient-centered outcomes research.

Check here if Employer will pay.

This Administrative Fee Schedule does not include investment fund operating expenses. Fund operating expenses vary by fund and are expressed in Plan literature as an annualized percentage of assets. Fund operating expenses are applied at the fund level.

**Additional Fee Information:**

## PLAN ADMINISTRATION SUPPORT SERVICES

Plan Administration Support Services that may be provided by the HRA Service Manager or any subcontractor of the HRA Service Manager shall include non-discretionary assistance and support for the Administrator in the performance of all duties, powers, and responsibilities of the Administrator specifically set forth in the Plan Documents, policies, or procedures, and other Plan forms and materials (as the same may be amended from time to time) and other non-discretionary duties powers, and responsibilities approved or directed by the Plan Sponsor from time to time, including without limitation the following administration support services:

1. Provide assistance to Plan Sponsor and Participating Employers with Plan design elections and completion of plan adoption documents.
2. Provide Plan Sponsor and Participating Employers with Plan adoption/welcome package after receipt of a completed adoption agreement in good order.
3. Design and print Plan literature (including, but not limited to, enrollment forms, claim forms, Investment allocation forms, question-and-answer forms, Plan Summary/Summary Plan Description, etc.).
4. Maintain an inventory of necessary forms and literature.
5. Draft, create, and make any changes to Plan documents, Plan forms, Plan materials, Plan literature, and Plan policies and procedures as are routine, desirable, or necessary to improve the efficiency and effectiveness of the operation of the Plan, clarify ambiguities for the benefit of the Administrator, Plan Sponsor, or Eligible Participants, and to comply with applicable legal requirements.
6. Assist with communication between, and coordinate the activities of, all subcontractors and service providers to the Plan.
7. Facilitate payment of operating expenses of the Plan in accordance with the Plan Documents and direction of the Administrator.
8. Provide reasonable assistance and services necessary to obtain or make all necessary regulatory or other governmental filings, registrations and approvals for this Plan, including providing information and reports to the Plan Sponsor and Participating Employers.
  - Quarterly fund activity summary – Covers contributions, Investment earnings, and distributions for all participating employees on an aggregate basis;
  - Quarterly and annual trust statements – Includes balance sheets, as well as income and expense statements;
  - Disbursement Report – Quarterly report containing aggregate claims paid by category: medical, dental, vision, prescriptions and premiums;
  - Other reports – The third-party administration service provider will provide other reports that are reasonable and customary, including transaction reports confirming contributions.
9. Maintain and provide access to all records of the custodian, the HRA Service Manager and others relative to the Plan as needed for Plan and Trust audits.
10. Provide recordkeeping services for Participant and Employer Accounts.
11. Provide ministerial claims reimbursement services to Participants and Employers (for Employer Accounts). Claims reimbursement services include determination if a receipt is valid and covers a qualified expense under IRC § 213(d), and delivery

of all applicable notices required in the Plan document. Any determination on appeal requiring discretion must be approved in writing by the Administrator. Claims reimbursement services may include a healthcare debit card for participants to use for certain permitted expenses, as negotiated and subject to terms and conditions of the card vendor.

12. Provide customer care center (call center) service and assistance to Participants relating to enrollment, Plan benefits, account changes, investment allocations, website and other Plan questions and assistance.
13. Provide technical, compliance, and educational support to the Plan Sponsor, Participating Employers, and Eligible Participants.
14. Draft periodic Plan Sponsor/Participating Employer and Participant communications regarding legal and compliance updates, participant rights and responsibilities, and reminders regarding Plan benefits, policies, and procedures, etc.
15. Prepare and deliver notices and documents to Participants and Plan Sponsor/Participating Employer, as necessary, desirable, or required by law, including, but not limited to, communications contemplated for in the Investment Management Services described in Exhibit D, or as otherwise agreed.
16. Recommend and implement operational and compliance policies and procedures for the effective and efficient and compliant operation of the Plan.
17. Provide custodian and transfer agent services with respect to all Plan assets.
18. Assist with the investigation of errors reported to the Plan by a Plan Sponsor, Employer, or Participant.

## PLAN REPRESENTATIVES

- **Gallagher Benefits Services, Inc. (“GBS”)**, in its capacity as the HRA Service Manager and subcontractor of GBS.
- **Gallagher Fiduciary Advisors, Inc. (“GFA”)**, in its capacity as the investment manager, but only if the Plan Sponsor elects the HealthInvest HRA standard fund lineup and in such case only to the extent of the scope of services described in Addendum D hereto.
- **Washington Trust Bank**, in its capacity as Custodian and Master Trustee.

Any other Plan Representative that is required for the uniform management and administration of the HealthInvest HRA Plan and which is identified in the Plan Adoption Agreement or otherwise designated in writing by the HRA Service Manager as a HealthInvest Plan Representative.



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## ADDENDUM D

# Investment Management Services

Following this page is a copy or description of the Investment Management Contract between the Plan Sponsor and the Investment Manager appointed by the Plan Sponsor as provided under Section 2(e) of the Plan Adoption Agreement.



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## ADDENDUM E

# HIPAA Business Associate Agreement

Following this page is the executed HIPAA Business Associate Agreement between the Plan Sponsor on behalf of the Plan, as Covered Entity, and Gallagher Benefit Services, Inc., as the HRA Service Manager.



# HealthInvest HRA

Investment advisory, named and independent fiduciary services are offered through Gallagher Fiduciary Advisors, LLC, an SEC Registered Investment Adviser. Gallagher Fiduciary Advisors, LLC may pay referral fees or other remuneration to employees of AJG or its affiliates or to independent contractors; such payments do not change our fee. This document contains confidential and proprietary information that belongs to Gallagher Fiduciary Advisors, LLC and is protected by copyright, trade secret and other State and Federal laws. Any copying, redistribution or retransmission of any of the contents without the written consent of Gallagher Fiduciary Advisors, LLC is expressly prohibited. Gallagher Fiduciary Advisors, LLC is a single-member, limited liability company, with Gallagher Benefit Services, Inc. as its single member. Neither Arthur J. Gallagher & Co., Gallagher Fiduciary Advisors, LLC nor their affiliates provide accounting, legal or tax advice.

**EMPOWER BENEFITS, INC., DBA CORESTREAM**

**CLIENT AGREEMENT**

**COVER PAGE**

This Client Agreement ("**Agreement**") is made on [DATE] ("**Effective Date**"), by and between Empower Benefits, Inc., d/b/a Corestream, a Delaware corporation with principal executive offices located at 5404 Cypress Center Dr., Suite 130, Tampa, FL 33609 ("**Corestream**"), and [CLIENT], a [STATE] [ENTITY] with its principal executive offices located at [ADDRESS] ("**Client**"). Corestream and Client are referred to herein collectively, as the "**Parties**" and individually, each a "**Party**".

(A) Corestream provides certain administrative services pertaining to the development and implementation of benefit programs on behalf of participating clients and their employees. In connection with such services, Corestream offers its clients a payroll deduction program whereby their employees are authorized to purchase products and services from participating vendors by deducting the purchase price, or the amount of the premiums, as the case may be, from the employees' wages.

(B) Corestream also operates an online shopping portal at the Corestream Site, which promotes various products and services from vendors at preferred prices. Corestream promotes and markets the products and services offered on the Corestream Site through direct marketing channels to its clients and their employees.

(C) Client desires to have Corestream be the exclusive provider of the administrative services that are more specifically described in this Agreement, have Corestream make the Products available for purchase by Client's eligible employees, and to compensate Corestream for its services as set forth in this Agreement.

(D) This Agreement is comprised of (i) this Cover Page, (ii) the attached Service Terms, and (iii) the Exhibits listed below, and all addenda, amendments, exhibits, and statements of work that reference this Agreement and are subsequently agreed to by the Parties in writing (each an "**Addendum**" and collectively, the "**Addenda**"):

- (1) Exhibit A: Broker of Record Letter
- (2) Exhibit B: Featured Providers
- (3) Exhibit C: Fees
- (4) Exhibit D: Promotional Commitment
- (5) Exhibit E: Member Access Commitment

(E) Unless the Parties subsequently agree to a different date in writing, Client will begin participating in the Corestream Benefits Platform no later than the first payroll in [INSERT MONTH, YEAR].

(F) Certain capitalized terms used in this Cover Page are defined in the Service Terms.

(G) This Agreement is made and effective as of the Effective Date and is executed by a duly authorized representative of each Party as of the Effective Date.

**EMPOWER BENEFITS, INC.**

**Client: [CLIENT NAME]**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Notice Address:

Notice Address:

Attn: CFO  
Empower Benefits, Inc. d/b/a Corestream  
5404 Cypress Center Dr, Suite 130  
Tampa, FL 33609  
Fax: 239-280-5799

Attn:  
Address:  
Email:  
Fax:

## SERVICE TERMS

1. **DEFINITIONS.** Capitalized terms used in this Agreement, if not otherwise defined on the Cover Page to which these Service Terms ("**Service Terms**") are attached, have the meanings set forth below in this Section 1 or elsewhere in these Service Terms:

1.1. "**Broker of Record Letter**" means a letter substantially in the form attached hereto as Exhibit A (*Broker of Record Letter*) signed by Client indicating that Corestream has been selected by Client to represent it in connection with the Products made available by Providers participating in the Corestream Benefits Platform. Broker of Record Letter also refers to any letter designating Corestream as the "Servicer of Record", "SOR", "Co-Broker of Record", or "Co-BOR", *provided that* such designation is used in accord with applicable Provider designations and is not used in a manner to modify the economic terms or Corestream's role in the collection and processing of funds related to Corestream Programs.

1.2. "**Commencement Date**" means the date of the first payroll deduction cycle that is processed by Corestream.

1.3. "**Corestream Benefits Platform**" means the platform whereby Corestream features and hosts certain Products, and makes such Products available for purchase or for enrollment into by an eligible Member, and then facilitates the billing for such Products through payroll deduction.

1.4. "**Corestream IP**" means, collectively, any, **(a)** tangible or intangible content, data, or information made available by Corestream in connection with Client's or a Member's access to or use of the Corestream Technology, including, without limitation, analytics, forms, graphs, metrics, policies, procedures, reports, and any improvement and revisions thereto, including any customized improvement made specifically for Client; **(b)** algorithms, analytics, audio-visual works, charts, compilations, conceptions, data, database structuring techniques, databases, designs, developments, diagrams, discoveries, drafts, formatting, general skills, ideas, inventions, know-how, libraries (code or otherwise), lists, logic, 'look and feel,' materials, methodologies, methods of operation of systems, models, notes, outlines, preparatory materials, processes, routines, schematics, screen designs, sketches, software and its object and source code (including, without limitation, the Corestream Benefits Platform and the ESP), system designs, techniques, templates, tools, user interfaces, and utilities and any combinations thereof, that are used by Corestream to deliver or made available for Client's or its Member's access hereunder and any improvement and revisions thereto, whether any of the foregoing are in tangible or intangible form; and **(c)** any Intellectual Property Rights in and to any and all of the foregoing.

1.5. "**Corestream Programs**" means any of the programs or services offered by Corestream to its clients, including but not limited to the operation of the ESP, the administration of the Corestream Benefits Platform, or any other such program offered by Corestream from time to time.

1.6. "**Corestream Site**" means that certain worldwide Web site(s) operated by or on behalf of Corestream and located at a subdomain or subpage at [www.corestream.com](http://www.corestream.com), or any other site managed or hosted by Corestream pursuant to this Agreement.

1.7. "**Corestream Technology**" means, collectively, the Corestream Benefits Platform, the Corestream Site, the ESP, and any interfaces thereto, made available by Corestream to Client or a Member in connection with this Agreement.

1.8. "**Deducted Funds**" means the specific deduction amount per pay period for all Products purchased or enrolled into by the Member in accordance with the Corestream Benefits Platform.

1.9. "**Enrollment File**" means that file that a Provider will send to Corestream of the Members that have enrolled in insurance coverages.

1.10. "**Deduction Request File**" means the file that Corestream provides to Client, which identifies the amount authorized by the Member(s) as payment for enrollment into, or purchase of, Products.

1.11. "**Eligibility File**" means that file that Client will send to Corestream, and which provides Corestream with eligible Member names, addresses, and contact information that will be provided to each Provider.

1.12. "**Enrollment Form**" means the physical or electronic form or language to be completed or agreed to by eligible Members who desire to participate in the Products.

1.13. "**ESP**" means the employee discount shopping portal which promotes various products from participating vendors at preferred prices on the Corestream Site.

1.14. "**Event of Disqualification**" means any or all of the following: **(a)** a change in the employment status of the Member such as a termination, a strike or lockout, a commencement of unpaid leave of absence, or suspension with or without pay; or **(b)** a change in the employment status of the Member with the consequence that, in Client's sole discretion, the individual ceases to be eligible to participate in the Corestream Benefits Platform.

1.15. "**Intellectual Property Rights**" means any and all intellectual property rights existing from time to time under any law or regulations, including without limitation patent law, copyright law, semiconductor chip protection law, moral rights law,

trade secret law, trademark law, unfair competition law, publicity rights law, or privacy rights law, and any and all other proprietary rights, and any and all applications, renewals, extensions, and restorations of any of the foregoing, now or hereafter in force and effect worldwide.

**1.16. “Marketing Materials”** means Corestream’s promotional and technical information and materials describing the Corestream Programs and the Products, including but not limited to, website contents, brochures, press releases, mailing pieces, and data sheets together with the Corestream Marks used therein. Marketing Materials does not include Provider Marketing Materials.

**1.17. “Marks”** means any logo, service mark, slogan, trademark, trade dress, trade name, trade dress, or other similar source indicator.

**1.18. “Member”** means any eligible U.S.-based employee of Client who has been authorized by Client to access the ESP, through the Corestream Site, or participate in the Corestream Benefits Platform, as a benefit of employment.

**1.19. “Products”** means the products and services that Corestream offers to Members from time to time.

**1.20. “Provider”** means any vendor which has contracted with Corestream to offer its Products from time to time through the Corestream Technology.

**1.21. “Provider Marketing Materials”** means any informational, promotional, and technical information and materials that Provider creates or otherwise makes available, and may include, without limitation, brochures, data sheets, mailing pieces, press releases, and Web site contents together with the Provider Marks used therein.

**1.22. “Wages”** means the total wages and salary paid to a Member by a Client, including overtime payments and bonuses.

**2. OPERATION OF CORESTREAM SITE.** Corestream will develop, maintain, and operate the Corestream Site in accordance with the terms and conditions set forth in this Agreement. The Corestream Site will provide access to descriptions of various Products and Providers made available via the Corestream Platform from time to time. Such Providers are solely responsible for the cost, development, maintenance, and operation of any pages that are accessible by Members relating to the purchase of the Providers’ Products and Corestream will have no obligations or liability with respect thereto. The ESP content offered on the Corestream Site may change from time to time in Corestream’s sole discretion. Payment information submitted through the Corestream Site, if any, will be encrypted using SSL (secure socket layer) technology or such other appropriate technology as is then available to secure the online ordering and purchase of Products by Members.

### **3. CORESTREAM BENEFITS PLATFORM.**

**3.1. Purpose.** The purpose of the Corestream Benefits Platform is to permit an eligible Member to purchase Products from a Provider by either deducting the purchase price, or the amount of the premiums, as the case may be, from the Member’s Wages or through any other payment arrangement or payment format. Client understands that the Corestream Benefits Platform and the Products are only available to those Members who reside in the United States.

**3.2. Designation of Participating Providers.** Attached as Exhibit B (Featured Providers) is a list of featured Providers, which may offer Products to Client and its Members from time to time through the Corestream Benefits Platform. During the Term, Client agrees that it will not enter into a contract or agreement with any of the featured Providers for the purchase of any of the Products listed in Exhibit B except through the Corestream Benefits Platform and in accordance with this Agreement. Subject to applicable law and any regulatory or notice requirements, Providers may modify, remove or discontinue Products that are available via the Corestream Platform.

**3.3. Customer Service.** Corestream will be responsible for any customer service inquiries pertaining to Members’ participation in the Corestream Benefits Platform, *provided, however*, that any inquiries regarding any of Providers’ web pages accessible from the Corestream Site, or resolution of any specific inquiries or performance issues pertaining to any Products made available on such web pages, will be directed to the applicable Provider. For the avoidance of doubt, Client understands and agrees that development, maintenance, and operation of any pages hosted by the Providers, which may be accessible by Members relating to the purchase of the Providers’ Products, are the sole responsibility of the relevant Provider and Corestream will have no obligations or liability with respect thereto. Client understands that such pages and information thereon are subject to the Providers’ own regulatory and compliance obligations.

**3.4. Interface, Usability, and Communications.** Corestream will create an interface accessible from the Corestream Site, from which each Member can view certain information and reports regarding such Member’s participation in, and deductions under, the Corestream Benefits Platform. Further, Corestream will provide Members with **(a)** access to annual or ad-hoc enrollments for each Provider as appropriate; **(b)** the ability to self-enroll into Products, as permitted by a relevant Provider; and **(c)** the ability to register for reminders, announcements, and notices in connection with Products, Providers, the Corestream Benefits Platform, and the Corestream Programs and to otherwise manage these communications.

**3.5. Cancellation by Member.** Except with respect to those Products where Corestream is responsible for handling terminations, Client understands that each Provider is solely responsible for handling and processing the termination of a Member's enrollment in the Provider's Products. In the event that a Member terminates enrollment in a Provider's Products, such Provider will promptly notify Corestream that such enrollment in the Product(s) has been terminated by submitting an updated Enrollment File, indicating the cancellation or termination of the Member. Upon receipt of the updated Enrollment File, Corestream will notify Client of the cancelled enrollment by a Member. Any purported cancellation by a Member participating in the Corestream Benefits Platform which is not in accordance with this Section 3.5 will be ineffectual.

#### **4. CLIENT DUTIES AND ADMINISTRATIVE PROCEDURES.**

**4.1. Client Obligations.** The Parties agree that Client will use commercially reasonable efforts to perform and meet its obligations regarding the implementation of the administrative procedures set forth in this Section 4 (*Client Duties and Administrative Procedures*); *provided, however*, that Corestream expressly acknowledges that certain commercially reasonable modifications to the procedures set forth in this Section 4, including in particular Sections 4.3 (*Fees and Commissions*), 4.4 (*Designation of Participating Members*), and 4.5.2 (*Deduction of Member's Wages*) may be required in order for Client to successfully integrate the Corestream Benefits Platform with its internal procedures, and such commercially reasonable modifications will not constitute a breach of this Agreement.

**4.2. Broker of Record Letter.** Upon execution of this Agreement, Client agrees to execute a Broker of Record Letter substantially in the form attached hereto as Exhibit A (*Broker of Record Letter*) indicating that Client has selected Corestream to represent Client in connection with the Products made available in the Corestream Benefits Platform. Client specifically authorizes Corestream to disclose the existence of the Broker of Record Letter and Client's participation in such Corestream Benefits Platform to current and prospective Providers. The BOR will remain in force and unmodified for so long as Corestream is providing services to Client. Client agrees to exclusively assign Corestream as the Broker of Record, pursuant to which Corestream can earn commissions, for the featured Products listed in Exhibit B (*Featured Providers*). If Client requests Corestream to feature additional programs but fails to update Exhibit B, Client agrees that Corestream will be the de facto Broker of Record. For so long as Corestream is providing services to Client and except as agreed in writing in advance by Corestream, Client further agrees not to assign any brokers, administrators, or consultants or any other third party as a Broker of Record other than Corestream for Corestream Programs nor to modify the contents of Exhibit B.

**4.3. Fees and Commissions.** Corestream Programs will be at no cost to Client. Client acknowledges that Corestream uses the Broker of Record Letter to earn commissions/fees from the carriers/vendors as compensation for the services provided to Client. Client further acknowledges that without the Broker of Record Letter, Corestream does not have a way to receive compensation from the carriers. Client agrees that commissions earned from policies sold to or enrolled by Members during the Term will be assigned to Corestream for the life of the policy. If Client changes its technology infrastructure (including, without limitation, payroll providers) after the initial Corestream implementation has been completed or at any other time during the Term and such changes cause Corestream to incur additional costs to perform the services hereunder, Client will pay Corestream a \$75,000 (or such other amount as the Parties may mutually agree in advance in writing) change order fee for each such infrastructure change to cover the implementation work required to build, test, and implement the previously established deduction request and deduction confirmation files. Corestream will invoice the change order fee, with payment due on a Net 30 basis via ACH, EFT as detailed on the invoice, or via alternative means as mutually agreed in advance in writing.

**4.4. Designation of Participating Members.** Client will provide Corestream with the list of Members who, in Client's sole discretion, are eligible to participate in the Corestream Programs. Corestream will use commercially reasonable efforts to provide such Members with access to the Corestream Technology within a reasonable amount of time thereafter. If after the Commencement Date Client decides to designate additional Members, Client may do so upon written notice to Corestream of the number and names of such additional Members. Client may remove a Member by written notice to Corestream; *provided, however*, that the removal of a Member will not affect the liability of such Member for any Products purchased prior to termination. The Parties expressly acknowledge that the Provider may refuse enrollment of any Member into a particular Product based on the information contained in the Enrollment Form.

#### **4.5. Enrollment and Deductions.**

**4.5.1. Member Enrollment.** Beginning on the Commencement Date, Client will have the option to feature certain Providers' Products by providing or otherwise making available such Providers' Enrollment Forms to any Member which, in Client's sole discretion, is eligible to participate in the Corestream Benefits Platform, subject to the requirements contained in this Section 4.5 (*Enrollment and Deductions*). Any such eligible Member may submit the completed Enrollment Form directly to Corestream or a Provider, as applicable, to request enrollment in the selected Product. Upon receipt of completed Enrollment Forms for a given period, the Provider will forward an Enrollment File to Corestream including those additional enrollments, in a layout specified by Corestream, indicating Member's enrollment and the deduction amount. If an issue arises and verification is necessary, Client may, with the participating subject Member's express consent, request Corestream to ask each Provider to provide copies of any enrollment documentation for a participating Member to Client, together with any authorization forms

executed by such Member. All Member enrollments will be communicated by Provider to Corestream via the Enrollment File, and to the Client via the Deduction Request File.

**4.5.2. Deduction of Member's Wages.** Each Member participating in the Corestream Benefits Platform who elects to enroll or purchase a Product from any of the featured Providers must execute an Enrollment Form, in accordance with Section 4.5.1 (Member Enrollment), authorizing payroll deductions or other billing arrangement, as may be available through a given Provider. Upon Corestream's receipt of the Enrollment File from Provider, Corestream will provide a Deduction Request File to Client using the mutually agreed upon file exchange process and Client will set up appropriate payroll deduction amounts in accordance with Client's process as specified during the payroll deduction implementation process. Client agrees to remit the aggregated Deducted Funds for all pay periods within the month directly to Corestream by the 10<sup>th</sup> of the following month. The Deduction Request File will specify the amount to be deducted from each paycheck.

**4.5.3. Remittance of Payment to Provider.** Upon receipt of the Member funds from Client in accordance with Section 4.5.6 (Summary of Deducted Funds), Corestream will remit the funds received to the applicable Provider.

**4.5.4. Eligibility File.** Client will provide Corestream with a weekly Eligibility File per the mutually agreed upon file exchange process. Corestream is permitted to rely on the accuracy and correctness of the Eligibility File and will reasonably cooperate with Client, the Provider, and the relevant Member in the event a party identifies a discrepancy.

**4.5.5. Notice of Payroll Schedule.** Client will notify Corestream of payroll schedule(s) for all eligible Members participating in one or more Corestream Programs. Client agrees to deduct the Deducted Funds in a given payroll period if notification is received from Corestream a minimum of 5 workdays prior to the payroll date.

**4.5.6. Summary of Deducted Funds.** Client will return to Corestream a summary sheet ("Reconciliation File") listing the Deducted Funds for the particular payroll period for each participating Member with the payroll deduction remittance, indicating thereon any variance between the amount to be deducted under the Enrollment Form and the amount actually deducted and remitted by Client. Client will issue one payment via ACH or wire transfer to Corestream for the aggregate amount being deducted. The Parties agree that in the case that Client issues payment that is: **(a)** in excess of what is indicated in the Reconciliation File, Corestream will refund the excess amount via ACH only; and **(b)** less than what is indicated in the Reconciliation File, Client agrees to promptly remit the amount of the deficiency to Corestream and use its best efforts to cure the problem, implementing appropriate and reasonable safeguards, if necessary, to prevent future discrepancies.

**4.5.7. Event of Disqualification.** Client will promptly provide Corestream with notice of any Event of Disqualification for any Member and provide such other information as necessary or reasonably requested by Corestream to permit Corestream to provide the Products hereunder, including providing Client with the final amount to be deducted from a disqualified Member's Wages, as applicable.

**4.5.8. Continuation of Payroll Deduction.** Client agrees to continue processing deductions for those purchases made prior to non-renewal or termination of this Agreement until paid in full.

**4.5.9. Refunds and Credits.** Corestream will reconcile the Reconciliation File and process any changes and Corestream will request that refunds to Members are made by Providers within two Client payroll cycles. Client agrees and understands that Corestream has no control over the Providers or how such Providers handle refunds. Further, Client agrees that Client will not authorize refunds or credits to any former Member's account and that Client will not terminate deductions from such a Member's paycheck without the advance permission of Corestream.

**4.6. Communications Commitment.** Corestream will make available to Client from time to time such of Corestream's Marketing Materials as are reasonably required to promote and market the Corestream Programs and the Products as well as those Provider Marketing Materials made available by applicable Providers. Client agrees that Client will promote the Corestream Programs and the Products and promptly disseminate the Marketing Materials and the Provider Marketing Materials to its Members, as set forth in the schedule attached as Exhibit D (Promotional Commitment).

**4.7. Client Marks and Marketing.** Client will make available to Corestream, in a mutually agreeable manner and format, Client's Marks and marketing content as are reasonably required for Corestream to represent Client on the Corestream Site. Client agrees that it will promptly provide to Corestream any revised or updated version of Client's Marks and marketing content as appropriate. When both Parties agree that it would be mutually beneficial to display certain Marketing Materials and Client's Marks on the Corestream Site, then the Parties also will agree in advance in writing upon: **(a)** the specific Marketing Materials and Client's Marks to be displayed; **(b)** the location of the materials on the Corestream Site; **(c)** the format and any other applicable specifications for the materials to be provided; and **(d)** the manner of delivery or access for the materials to the other Party. Corestream reserves the right to the editorial content in the Corestream Site; *provided, however*, that Corestream will not make any changes to Client's Marks or marketing content without Client's prior written consent.

**4.8. Member Access to Corestream Site.** Client will use its best efforts to make the Corestream Site and Corestream Programs accessible by eligible Members, as set forth in the schedule attached as Exhibit E (Member Access Commitment). At a minimum, Client agrees to: **(a)** include a banner or hyperlink to the Corestream Site on Client's corporate intranet; and **(b)** describe any applicable Corestream Programs in Client's core benefits materials.

**4.9. Corestream and Provider Access to Members.** Client will use its best efforts to allow Corestream and the Providers to meet with eligible Members in order to provide such Members with information regarding the Corestream Programs and enroll them in the Providers' Products. At a minimum, Client agrees to: **(a)** allow each Provider to participate in any regularly scheduled benefit fairs hosted or sponsored by Client; **(b)** allow Corestream to organize at least two benefit fairs per year, which will exclusively feature the Providers and the Products made available under this Agreement; and **(c)** allow each Provider to conduct quarterly site visits to host seminars in order to provide eligible Members with information regarding the Provider's Products and accept enrollments from Members into such Products.

**4.10. Email Access to Members.** Client will provide Corestream with the email addresses of all Members for site registration and email communication. Client agrees to white list Corestream's email domain to allow emails to be transmitted to Members. Corestream agrees to communicate monthly with Members via email.

**4.11. Contact Information for Former Members.** Client agrees to provide to Corestream the last known address and telephone number for any former Member who formerly participated in a Corestream Program.

**4.12. Participation in Additional Corestream Programs.** Client may elect to take advantage of additional Corestream Programs from time to time by purchasing such programs or services from Corestream.

**4.13. Cooperation.** Client acknowledges that Corestream cannot perform the services under in this Agreement without the assistance and cooperation of Client and its employees, agents, and vendors. To that end, Client will: **(a)** reasonably cooperate with Corestream and devote such time as may reasonably be requested by Corestream to timely review any information provided and timely respond to and advise Corestream with respect to activities as they relate to this Agreement; **(b)** provide to Corestream, at no charge, reasonable access to any of Client's employees, agents, and vendors, as applicable, to assist Corestream with respect to activities as they relate to this Agreement; and **(c)** take, at Client's expense, the necessary steps (including, without limitation, obtaining all consents, licenses, sublicenses, and interfaces), to make available to Corestream the Client resources that Corestream requires or reasonably requests to provide the Corestream Programs.

**5. COMPENSATION.** In addition to the obligations set forth in Section 4.3 (Fees and Commissions), during the Term, Client will pay Corestream a fee of \$0.00 for Client's participation in the Corestream Benefits Platform. Client will submit an electronic statement via the agreed file exchange process setting forth the total number of Members participating in the Corestream Benefits Platform, within 30 days of the end of each calendar month.

## **6. CONFIDENTIALITY.**

### **6.1. Confidential Information.**

**6.1.1. Definition of Confidential Information.** In the provision of the Corestream Programs, each Party ("**Recipient**") may have access to or otherwise receive Confidential Information from the other Party ("**Discloser**"). For purposes of this Agreement, "**Confidential Information**" means all information in spoken, printed, electronic, or any other form or medium, relating directly or indirectly to: **(a)** information relating to the Discloser's business or financial affairs, including, without limitation, all financial information and statements, business plans and techniques, communications, competitive intelligence, contractor information, customers, employee information, internal controls, know-how, management plans and techniques, manner of operation, marketing plans and techniques, negotiations, price lists, pricing structures and policies, processes, prospective customers, policies, reports, security procedures, vendor lists, work-in-process and product plans, and trade secrets; **(b)** with respect to Corestream, the terms and fees under this Agreement, the commissions and fees for any Products, the fees payable to any Broker of Record (or a similar designation), the Corestream Technology and the components thereof, Corestream Programs, all audit and security reports, analytics, audio-visual works, demos and associated materials, "look and feel", technical architecture, training materials, software and technical information, user interfaces, and know-how that is used by Corestream to deliver the services under this Agreement, whether tangible or intangible; and **(c)** any other information, knowledge, or data, in whatever form or medium, concerning or relating to the business affairs of Discloser or of any other person or entity that has entrusted information to the Discloser in confidence and that should reasonably have been understood by the Recipient (because of legends or other markings, the circumstances of disclosure, or the nature of the information itself) to be proprietary or confidential to the Discloser. Specific aspects or details of the Corestream Technology or the Corestream Programs will not be deemed to be publicly known merely because general aspects of such programs or systems are publicly known. In addition, any combination of the Corestream Benefits Platform, the Corestream Site, Corestream Programs, and the ESP will not be considered to be publicly known merely because individual elements of such programs or systems are publicly known unless the combination itself is publicly known.

**6.1.2. Exclusions.** Confidential Information will not include and the obligations under this Section 6 (Confidentiality) will not apply to any portion of Discloser's Confidential Information that: **(a)** at the time of disclosure to Recipient was in the public domain or subsequently becomes a part of the public domain through no breach of this Agreement; **(b)** Recipient had in its possession at the time of disclosure by Discloser, and that was not acquired directly or indirectly from Discloser; **(c)** Recipient subsequently acquires by lawful means from a third party who is under no obligation of confidentiality or non-use owed to Discloser; **(d)** was known by Recipient prior to any disclosure of such information made by Discloser; or **(e)** Recipient subsequently develops without any use of or reference to Discloser's Confidential Information.

**6.2. Use of Confidential Information.** Except as permitted in this Agreement, Recipient will not use the Confidential Information of Discloser except for the purpose of performing its obligations under this Agreement or exercising the rights granted in this Agreement (the "**Purpose**"). Unless otherwise agreed in writing by Discloser, Recipient may disclose Confidential Information of Discloser only to the directors, officers, employees, subcontractors, contractors, advisors (including financial advisors, legal counsel, and accountants), auditors, and agents (collectively, the "**Representatives**") of Recipient who have a reasonable need for access thereto for the Purpose, *provided that* the Representatives will be bound by an obligation of confidentiality. The Parties further agree that Recipient may disclose Discloser's Confidential Information **(a)** to establish Recipient's rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is required or reasonably appropriate; **(b)** to any potential transferee or assignee as contemplated in Section 12.5 (Assignment); **(c)** to a government or other third-party auditor, including a Provider auditor, in connection with an audit; **(d)** as required by law, including, without limitation, in connection with government reporting obligations, such as those required by applicable state insurance laws, if any, except in connection with an Order, which will be handled in accordance with Section 6.4 (Disclosure Pursuant to Legal Process); and **(e)** when Recipient is Corestream, Corestream may disclose Client's Confidential Information, including, without limitation, the names, addresses, and other information regarding Client's Members to participating Providers and other vendors to facilitate individual transactions initiated by such Members between such Members and a particular Provider. Except as provided in this Agreement or if required to fulfill the Purpose, Corestream agrees not to distribute, sell, make available, or in any other way disseminate "mailing lists," "email lists," or contact information for Members to any third party, including participating Providers, without the express written approval of Client or the Member, where a Member's electronic opt-in by clicking on an opt-in button or such similar mechanism will be deemed to be such Member's written approval. For the avoidance of doubt, Client agrees and understands that Providers are not Representatives of Corestream. Client may request a direct confidentiality agreement between Provider and Client.

**6.3. Obligation to Protect.** Recipient agrees to maintain the confidentiality of Discloser's Confidential Information, and to protect as a trade secret any portion of Discloser's Confidential Information that constitutes a trade secret, by using the same standard of care in protecting Discloser's Confidential Information as Recipient uses to protect its own confidential and proprietary information, but in any case no less than a commercially reasonable degree of care.

**6.4. Disclosure Pursuant to Legal Process.** Should Recipient become legally compelled to disclose any portion of Discloser's Confidential Information in connection with a lawsuit or similar legal proceeding compelling disclosure (an "**Order**"), Recipient will give Discloser, where permitted by applicable law or the Order, prompt written notice of that fact, including in its notice the legal basis for the required disclosure and the nature of the Confidential Information that must be disclosed. Recipient will reasonably cooperate with Discloser in Discloser's effort to obtain a protective order or other appropriate protection relating to the disclosure and subsequent use of such Confidential Information. If disclosure of the Discloser's Confidential Information is required, Recipient will disclose to the person compelling disclosure only that portion of Discloser's Confidential Information that is legally required to be disclosed.

**6.5. Retained Rights.** Discloser's furnishing of Confidential Information to Recipient will not be construed as granting Recipient any right or license whatsoever in Discloser's Confidential Information, except for and only to the extent of the limited use granted in this Agreement. Confidential Information disclosed under this Agreement will remain the Discloser's property.

**6.6. Trade Secret.** Recipient acknowledges that its obligations under this Agreement with regard to trade secrets of Discloser remain in effect for as long as such information remains a trade secret under applicable law, *provided that* Discloser has provided Recipient with unambiguous written notice that such information is a trade secret of Discloser by expressly marking such information as Discloser's trade secret.

## **7. LICENSE AND USAGE.**

**7.1. License Grant.** Subject to Client's full and ongoing compliance with the terms of this Agreement, Corestream grants Client and Client accepts a limited, non-exclusive, non-transferable, non-sublicensable, non-assignable (except in accordance with Section 12.5 (Assignment)), revocable license during the Term to **(a)** access and use the Corestream Technology remotely and in the form made available by Corestream for use by U.S.-based Members and dependents; and **(b)** permit Client's Members to access and use the Corestream Technology within the United States **(i)** remotely and in the form made available by Corestream for use; and **(ii)** using the access credentials assigned solely to such Member.

**7.2. Marketing Materials.** Client agrees that Corestream or the participating Provider, as applicable, owns all of the Intellectual Property Rights in and to the Marketing Materials and Provider Marketing Materials that Corestream makes available to Client, and that Client may only reproduce and distribute such materials solely to fulfill Client's promotion and marketing obligations hereunder. Client will use the Provider Marketing Materials in accordance with the applicable Provider's usage restrictions, if any. Corestream agrees that the marketing materials that Client makes available to Corestream are copyrighted materials of Client, and that Corestream may only reproduce and distribute such materials solely to fulfill Corestream's promotion and marketing obligations hereunder.

**7.3. Trademarks.** Subject to the provisions of Section 9 (Term and Termination), each Party will have the right to distribute, reproduce, and use the other Party's Marks for identification purposes in performing the promotional and marketing activities described in this Agreement. Each Party agrees to ensure that all such use will comply with the standards of display

provided by the other Party as applicable, which the other Party reserves the right to change at its sole discretion at any time. Further, neither Party will take any action that would in any way infringe or interfere with the other Party's rights in its Marks. The Parties agree that, as between the Parties, any goodwill generated with respect to the use of the other Party's Marks will redound and inure to the benefit of such other Party. Nothing in this Agreement will give a Party any right, title, or interest in the other Party's Marks, except for the limited use rights contemplated in this Agreement. Notwithstanding [Section 6 \(Confidentiality\)](#) or this [Section 7.3](#), Client hereby grants Corestream the right to identify Client as a customer of Corestream on the Corestream Site, reference Client's name in press releases, and to use Client's Marks in connection therewith.

**7.4. Technology Ownership.** As between Client and Corestream, Corestream will retain and Client acknowledges that Corestream hereby retains all right, title, and interest in and to the Corestream IP and Corestream Technology, and each of their component parts, and nothing contained in this Agreement will be construed as the relinquishment on the part of Corestream of any of Corestream's ownership interest in the Corestream IP or Corestream Technology. Client's rights in the Corestream Technology will be limited to those expressly granted to Client in this Agreement. ALL RIGHTS TO THE CORESTREAM TECHNOLOGY AND CORESTREAM IP NOT EXPRESSLY GRANTED TO CLIENT IN THIS AGREEMENT ARE RESERVED.

**7.5. Restrictions.** Except as expressly permitted in this Agreement, Client will not: **(a)** copy or reproduce the Corestream Technology in whole or in part or access or use the Corestream Technology in any way other than as expressly permitted in this Agreement; **(b)** modify, translate, or create derivative works of the Corestream Technology or any portion thereof; **(c)** decompile, decrypt, disassemble, reverse engineer, or otherwise attempt to obtain or perceive the source code from which any component of the Corestream Technology is compiled or interpreted, and Client hereby acknowledges that nothing in this Agreement will be construed to grant Client any right to obtain or use such source code; **(d)** assign, distribute, grant a security interest in, lease, loan, rent, sell, share, sublicense, timeshare, use for service bureau purposes, or otherwise transfer the Corestream Technology; **(e)** divert, export, re-export, or transfer the Corestream Technology or any Corestream IP to any country that is embargoed by the United States or designated by the U.S. Government as a state sponsor of terrorism; **(f)** unless expressly authorized by Corestream in writing, access or use the Corestream Technology for purposes of monitoring its availability, performance, or functionality, or for any other benchmarking purpose, including authorizing or undertaking a penetration test, vulnerability scan, social engineering test, or any other similar activity against the Corestream Technology or Corestream; **(g)** interfere with or attempt to interfere with the proper functioning of the Corestream Technology or Corestream, including subverting or attempting to subvert embedded security controls; **(h)** access or use the Corestream Technology to develop content, data, features, functionality, graphics, or a service similar to or competitive with any component of the Corestream Technology; or **(i)** authorize, assist, or cause any third-party to do any of the foregoing. Client agrees and understands that the restrictions in this [Section 7.5](#) apply to any component of the Corestream Technology (including any Corestream IP therein) that is relevant to the restriction.

**7.6. Existing Data and User Information.** Client agrees and understands that Corestream may have received or may receive during the Term certain data from insurance carriers, insurance brokers, other Corestream clients, and other third parties, or from the Members or beneficiaries, that is also contained in Client's Confidential Information (the "**Existing Data**"). Further, subject to [Section 4.10 \(Email Access to Members\)](#), Client agrees and understands that Corestream may contact Members as necessary or reasonably appropriate to deliver the Corestream Programs and for other business-related reasons, including obtaining Member consent in connection with the Corestream Programs being provided to Client, obtaining Member consent to deliver additional Corestream Programs (including, without limitation, to enroll in other insurance types), and providing troubleshooting support and general assistance with the Corestream Technology. Notwithstanding any other term in this Agreement, in the event such Members grant to Corestream additional consents and authorizations, then Corestream may use any such information (the "**User Information**") as permitted by such Member and otherwise contact and maintain a relationship with such individual as agreed to and otherwise permitted by such individual.

**7.7. Usage Data and Operations.** Certain of the Corestream's systems may, from time to time, collect and automatically report back information to Corestream's servers related to usage of the Corestream Technology and the other Corestream programs and systems (collectively, the "**Usage Data**"), without notice to Client or the Member. Usage Data may be used by Corestream for any legally permitted purposes, including, without limitation, helping diagnose and resolve technical and performance issues in relation to the Corestream systems, improving the Corestream Programs, improving the Corestream programs and systems, and developing metrics and analytic algorithms. Further and for the avoidance of doubt, Client agrees and understands that Corestream uses all data collected in connection with its business and operations for the operation and management of its business including, without limitation, **(a)** creation of operational statistics; **(b)** creation and inclusion in financial reporting of aggregate statistics regarding services performed; **(c)** creation and inclusion in marketing materials of aggregate statistics highlighting the Corestream Technology and the Corestream Programs; **(d)** creation of analytics, benchmarks, and reports; and **(e)** advancing and improving existing products and services, creating new and enhanced products and services, and development and publication of market and industry intelligence and expertise; all of which and any improvements and enhancements thereto and whether in tangible or intangible form, will be and remain the intellectual property of Corestream and Corestream will own all Intellectual Property Rights therein.

**7.8. Feedback.** Client agrees and will ensure that its Members agree that submission of any corrections, error identification, ideas, improvements, modifications, proposals, or suggestions (collectively, the “**Feedback**”) to Corestream through its suggestion form, feedback form, wiki, forum, portal, support email, support calls or conference calls, meetings, or similar means is at Client’s and the Member’s own risk and that Corestream has no obligations (including, without limitation, obligations of confidentiality or use) with respect to such Feedback. Client hereby grants and will ensure that its Members grant to Corestream a perpetual, fully paid, royalty-free, irrevocable, sublicensable, transferable, worldwide, and nonexclusive right, and license to adapt, copy, disclose, display, distribute, modify, perform, reformat, use, create derivative works of, and otherwise exploit any and all Feedback for any legally permitted purposes.

**7.9. Malicious Code.** Both Parties will use commercially reasonable efforts and will implement technical and administrative safeguards intended to prevent transmission of any “computer viruses,” “time bombs,” “malware,” worms, trojans, malicious software, or any code that is designed to delete, disable, deactivate, interfere with, or otherwise harm or disrupt the Corestream Technology or the technology network of Client or Corestream, or that in any way affects the use, enjoyment, or service of the Corestream Technology, or any user’s computer or other medium used to access the Corestream Technology or the technology network of Client or Corestream.

## **8. COMPLIANCE.**

**8.1. Audits.** Client will have the right to perform an audit of Corestream one time per calendar year, upon 30 business days advance written notice from Client to Corestream. Client will perform any such audit in good faith, for a commercially reasonable duration during Corestream’s regular business hours, and in a manner so as to minimize any adverse impact on Corestream’s business and operations. Corestream will make available, during normal working hours, to Client or its designee(s), Client-related books and records, *provided that*, Corestream will be under no obligation to disclose to Client any of Corestream’s financial records, contracts, or financial terms with any third parties (including, without limitation, the Providers or other carriers), records related to the services delivered to other clients, or any other records that are not directly and solely related to the services being provided to Client. Further, Client agrees and understands that as a result of the nature of the Products and the type of services provided by Corestream, applicable laws and restrictions imposed by carriers may limit the extent to which Corestream may disclose Members-related information. If the entity conducting the audit is not Client, such entity will enter into a mutually acceptable confidentiality agreement with Corestream. All information reviewed in connection with audits performed under this Section 8.1 will be treated as Corestream’s Confidential Information. No books, records, or other materials that are the property of Corestream or its suppliers, vendors, agents, or other third party provided in connection with any such audit, or any copies thereof, may be removed from Corestream’s premises without Corestream’s written consent. Client will provide Corestream with a copy of any audit findings and the audit report(s). In addition, notwithstanding the one per calendar year limitation, Client may perform additional audits to the extent required of Client by any applicable federal, state, or other licensing entity. Client agrees to bear the reasonable costs (including, without limitation, outside staffing support), incurred by Corestream in connection with any audits undertaken pursuant to this Section 8.1, *provided that* Corestream will provide Client with advance notice of the need to incur such additional costs.

## **9. TERM AND TERMINATION.**

**9.1. Initial Term.** This Agreement will remain in force for a consecutive period of 60 months from the Commencement Date (the “**Initial Term**”).

**9.2. Renewal Term.** At the end of the Initial Term, or Renewal Term, as applicable, this Agreement will automatically renew for three-year (3-year) periods (each a “**Renewal Term**”, collectively with the Initial Term, as the “**Term**”), unless written notice is delivered by a Party 150 days prior to the expiration of the then current Term or this Agreement is terminated in accordance with Section 9.3 (*Termination*).

**9.3. Termination.** This Agreement may be terminated by a Party in advance of the applicable Term upon the occurrence of either of the following:

(a) in the event that the other Party has materially breached any of the material provisions of this Agreement, on 30 days prior written notice to such other Party, unless such breach will have been cured within such 30 day period to the reasonable satisfaction of the Party that first provided notice; or

(b) in the event that: (i) the other Party’s assets are seized or attached in conjunction with any action against it by a third party; (ii) such Party has taken any action for the purpose of entering into winding-up, dissolution, bankruptcy, reorganization or similar proceedings analogous in purpose or effect thereto, including making a general assignment for the benefit of its creditors; (iii) such Party becomes insolvent or admitted in writing to its inability to pay its debts as they mature; or (iv) such Party ceases operations for any reason. The termination will be effective immediately upon written notice to such other Party or the date set forth in such notice.

### **9.4. Effects of Termination.**

**9.4.1. Obligations.** Upon termination of this Agreement for any reason, Client will promptly notify its Members of the cessation of the Corestream Programs and any related programs and will cease using any and all Marketing Materials,

Provider Marketing Materials, and Corestream Marks. Further, upon the latter of termination of this Agreement for any reason or when Corestream stops providing services to Client, except to the extent necessary or reasonably appropriate for the Member to use any of the Corestream Programs or Products selected prior to such termination, **(a)** Corestream will terminate Client and its Members' access to the Corestream Technology; and **(b)** Client will cease using all Corestream Technology.

**9.4.2. Return or Destruction of Confidential Information.** Except as otherwise set forth in this Section 9.4.2, upon the latter of the termination of this Agreement for any reason or when Corestream stops providing services to Client, Corestream agrees to end all further use of, to immediately return to Client the original version of, and to delete or destroy all tangible and intangible copies of all Client Confidential Information furnished by Client and in the possession or under the reasonable control of Corestream or its Representatives. Except as otherwise set forth in this Section 9.4.2, upon the latter of the termination of this Agreement for any reason or when Corestream stops providing services to Client, Client agrees to end all further use of, to immediately return the original version of, and to delete or destroy all tangible and intangible copies of all Corestream Confidential Information in the possession or under the reasonable control of Client or its Representatives. Notwithstanding the foregoing or any other terms of this Agreement, **(a)** neither Party will be required to retrieve or destroy the other Party's Confidential Information stored on backup media, other than in the normal course of its data management activities; **(b)** Corestream will not be required to retrieve or destroy any Existing Data, User Information, or Usage Data; and **(c)** each Party agrees and understands that the other Party may, in its reasonable discretion, retain certain Confidential Information of the Discloser for relevant business purposes, including to comply with business recordkeeping obligations, insurance laws, Provider or government audits, and federal and state data retention laws and requirements. Any Confidential Information retained past expiration or termination in accordance with this Section 9.4.2, will remain subject to Section 6.3 (Obligation to Protect).

**9.4.3. Survival.** The terms and conditions of this Agreement that would, by their nature, survive the expiration or termination hereof, including, without limitation, Sections 3.5 (Cancellation by Member), 4.3 (Fees and Commissions), 4.5.8 (Continuation of Payroll Deductions), 4.5.9 (Refunds and Credits), 6 (Confidentiality), 7.2 (Marketing Materials), 7.3 (Trademarks), 7.4 (Technology Ownership), 7.5 (Restrictions), 7.6 (Existing Data and User Information), 7.7 (Usage Data and Operations), 7.8 (Feedback), 9.4 (Effects of Termination), 10 (Representations and Warranties), 11 (Indemnification and Limitation of Liability), and 12 (General Provisions) will survive the expiration or termination of this Agreement until any obligations arising prior to such expiration or termination have been satisfied in accordance with the applicable terms.

## 10. REPRESENTATIONS AND WARRANTIES.

**10.1. Corestream.** Corestream represents and warrants to Client that: **(a)** Corestream has the right and authority to enter into this Agreement; **(b)** the execution and delivery of this Agreement has been duly authorized by the requisite corporate action and does not conflict with or violate any other agreement or other commitment to which Corestream is a party or by which Corestream is bound; **(c)** the services performed by Corestream under this Agreement will be done in a professional manner; **(d)** Corestream will, at its own expense, materially comply with all U.S. federal and state laws and regulations to the extent applicable to Corestream's performance of its obligations under this Agreement, including without limitation privacy and data security laws; and **(e)** the individual whose signature appears on the Cover Page hereto has the right and authority to enter into this Agreement on behalf of Corestream.

**10.2. Client.** Client represents and warrants to Corestream that: **(a)** Client has the right and authority to enter into this Agreement; **(b)** the execution and delivery of this Agreement has been duly authorized by the requisite corporate action and does not conflict with or violate any other agreement or other commitment to which Client is a party or by which Client is bound; **(c)** Client is the lawful owner of or will, at its own expense, obtain sufficient rights and the Members' and other third party consents and permissions that may be necessary or appropriate to permit Corestream to access and use the data, information, and materials that Client provides to Corestream in connection with Corestream's performance under this Agreement; **(d)** Client will, at its own expense, materially comply with all U.S. federal and state laws and regulations to the extent applicable to Client in connection with this Agreement; and **(e)** the individual whose signature appears on the Cover Page hereto has the right and authority to enter into this Agreement on behalf of Client.

**10.3. Warranty Limitations.** EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION 10 (REPRESENTATIONS AND WARRANTIES), TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, CORESTREAM MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES IMPLIED FROM A COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. CORESTREAM IS NOT RESPONSIBLE FOR HONORING OR SERVICING ANY WARRANTY PROVIDED TO CLIENT OR A MEMBER FROM A PROVIDER OR MANUFACTURER OF A PRODUCT OR SERVICE ORDERED THROUGH THE CORESTREAM TECHNOLOGY OR PURSUANT TO THIS AGREEMENT. IN NO EVENT WILL CORESTREAM BE RESPONSIBLE FOR ANY FACTORS AFFECTING CORESTREAM'S PERFORMANCE UNDER THIS AGREEMENT THAT ARE BEYOND CORESTREAM'S REASONABLE CONTROL INCLUDING BUT NOT LIMITED TO ANY DELAY, INACCURACY, OR OTHER NONPERFORMANCE IN CONNECTION WITH THE DELIVERY OF THE PRODUCTS PROVIDED HEREUNDER. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION 10, CLIENT UNDERSTANDS AND AGREES THAT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, CLIENT'S USE OF THE CORESTREAM TECHNOLOGY

IS AT CLIENT'S SOLE RISK, AND THE CORESTREAM TECHNOLOGY AND CORESTREAM PROGRAMS ARE PROVIDED ON AN "AS IS", "WHERE IS", AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION 10 AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, CORESTREAM MAKES NO WARRANTY, REPRESENTATION, OR CONDITION THAT: (a) THE CORESTREAM TECHNOLOGY OR THE CORESTREAM PROGRAMS WILL BE UNINTERRUPTED, TIMELY, OR ERROR-FREE; (b) ANY ERRORS IN THE CORESTREAM TECHNOLOGY WILL BE CORRECTED; OR (c) THAT CLIENT'S USE OF THE CORESTREAM TECHNOLOGY WILL NOT RESULT IN THE LOSS OF, OR DAMAGE TO, CLIENT'S CONFIDENTIAL INFORMATION OR DATA, CLIENT'S NETWORK, OR CLIENT'S END USERS' NETWORK, INFORMATION, OR DATA. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN (EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 10), OBTAINED BY CLIENT FROM CORESTREAM WILL CREATE ANY WARRANTY OF ANY KIND. For the avoidance of doubt, Client agrees and understands that, as between the Parties, Client is solely responsible for any and all employees benefits related compliance obligations, including, without limitation, any obligations arising out of the Employee Retirement Income Security Act of 1974 and its implementing regulations, as amended from time to time. Corestream will not be liable for any defects, flaws, programming errors, inefficiencies, or malfunctions in any third-party product or software. The Corestream Technology may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications and Corestream is not responsible for any delays, delivery failures, or other damages resulting from such problems.

## 11. INDEMNIFICATION AND LIMITATION OF LIABILITY.

**11.1. General Indemnification.** Each Party agrees to indemnify, defend, and hold the other Party and its respective officers, directors, employees, and agents harmless from and against any and all liability, including without limitation, losses, reasonable costs actually incurred, claims, damages, settlement amounts, judgment amounts, and reasonable expenses (including reasonable attorney's fees) actually incurred (collectively, "**Losses**") that are awarded against the indemnified party to the extent arising out of any third-party claim alleging a material breach of such Party's representations and warranties contained in Section 10 (*Representations and Warranties*).

### 11.2. Intellectual Property Indemnification by Corestream.

**11.2.1. IP Indemnification.** Corestream will indemnify, defend, and hold Client and its officers, directors, employees, and agents harmless from and against any and all Losses to the extent arising from a third-party claim alleging that Client's authorized use of the Corestream Technology infringes that third-party's patent issued in the U.S. as of the Effective Date or infringes that third-party's U.S. copyright, trademark, or trade secret in the U.S. (each an "**Infringement Claim**"). If, as a result of an Infringement Claim, Client is enjoined from using the Corestream Technology or in Corestream's opinion, the Corestream Technology is likely to become subject to an Infringement Claim, Corestream, at its sole option and cost, may: (a) promptly modify the Corestream Technology or replace the applicable component thereof, as applicable, so that the Corestream Technology is non-infringing and provides substantially the same functionality required by the specifications set forth in this Client Agreement, *provided that* such modification or replacement is not otherwise prohibited by or inconsistent with an applicable court order against Corestream; or (b) obtain the right for Client to continue to use the Corestream Technology in accordance with all of the terms of this Agreement; or (c) in the event that Corestream is unable or unwilling to cure the infringement in the manner described above and the Parties cannot timely agree on a mutually agreeable solution, then either Party may terminate this Agreement in accordance with Section 9.3 (*Termination*) above without any further opportunity to cure.

**11.2.2. IP Indemnification Limitation.** Notwithstanding anything to the contrary in this Agreement and subject to applicable law, Corestream will have no indemnity, defense, or hold harmless obligations for any Infringement Claim to the extent such Infringement Claim is based upon (a) modifications made by anyone other than Corestream employees; or (b) Client's failure to use any new or modified versions of the Corestream Technology, as advised or provided by Corestream or on its behalf. Further, notwithstanding anything to the contrary in this Agreement and subject to applicable law, Corestream will have no defense, indemnity, or hold harmless obligations for any Infringement Claim arising from (i) settlements and their related Losses where Client settles an Infringement Claim without Corestream's prior written consent; (ii) use of the Corestream Technology or components thereof in violation of this Agreement or in a manner not expressly authorized by Corestream in writing; (iii) combination of the Corestream Technology with any other equipment, apparatus, software, processes, or materials not furnished by Corestream; or (iv) compliance by Corestream with Client's designs, specifications, or instructions.

**11.2.3. Sole Remedy for IP Infringement.** This Section 11.2 (*Intellectual Property Indemnification by Corestream*) states Corestream's entire liability for any action, claim, or demand based upon or related to any alleged infringement of any Intellectual Property Rights, *provided that* Client will be permitted to terminate this Agreement for cause in accordance with Section 9.3 (*Termination*) in the event of any Infringement Claim.

**11.3. Claims and Cooperation.** A party seeking indemnification under this Agreement will promptly notify the indemnifying Party upon the assertion of any such eligible indemnity claim against the indemnified party (*provided, however* that the failure of the indemnified party to promptly notify the indemnifying Party will not relieve the indemnifying Party from its

indemnification obligations herein, except to the extent that the indemnifying Party is materially prejudiced by such failure) and will promptly provide the indemnifying Party with a copy of all information received by the indemnified party with respect to the proceedings. Further, the indemnified party **(a)** hereby grants to the indemnifying Party the right to control the defense and settlement of any such indemnifiable claim in the indemnifying Party's sole discretion as well as the right to make counterclaims pertaining to any such indemnifiable claim in the name and on behalf of the indemnified party, with counsel of indemnifying Party's own choosing, *provided however*, that the indemnifying Party will not admit the fault of the indemnified party without the prior written consent of the indemnified party; **(b)** will provide any reasonable assistance requested by the indemnifying Party (at indemnifying Party's reasonable expense) or the indemnifying Party's insurance carrier in support of the defense of the indemnifiable claim; and **(c)** will have the right to participate in the defense of any indemnifiable claim with counsel selected by the indemnified party, at the indemnified party's expense, subject to the indemnifying Party's right to control the defense thereof. In no event will either Party be liable to the other or to any third party for claims (whether direct or indirect) caused by or incurred as a result of such Party's own negligence, acts or omissions or that of its employees or agents in connection with this Agreement.

**11.4. No Special Damages.** TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, IN NO EVENT WILL CORESTREAM, ITS AFFILIATES, SERVICE PROVIDERS, SUPPLIERS, OR LICENSORS BE LIABLE TO CLIENT OR ANY THIRD PARTY (INCLUDING ANY MEMBER OR OTHER END USER) IN CONNECTION WITH OR RELATED TO THIS AGREEMENT OR ITS SUBJECT MATTER FOR ANY: **(A)** LOSS OF PRODUCTION, USE, BUSINESS, CONTRACTS, REVENUE, OR PROFIT, ANTICIPATED SAVINGS, OR DIMINUTION IN VALUE; **(B)** BUSINESS INTERRUPTION OR IMPAIRMENT, OR ANY USE OF OR INABILITY TO USE THE CORESTREAM TECHNOLOGY, OR PRODUCTS; **(C)** DAMAGE, CORRUPTION, OR RECOVERY OF DATA; **(D)** COST OF REPLACEMENT GOODS OR SERVICES; **(E)** LOSS OF GOODWILL OR REPUTATION; OR **(F)** CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES. To the fullest extent permissible under applicable law, the disclaimer set forth in this [Section 11.4](#) will apply whether such liability is asserted on the basis of contract, warranty, tort (including negligence or strict liability), product liability, course of dealing, or otherwise, and regardless of whether Corestream, its affiliates, service providers, suppliers, or licensors were advised of the possibility of such losses or damages or such losses or damages were otherwise foreseeable, and notwithstanding any failure of essential purpose of any limited remedy.

**11.5. Damages Cap.** Subject to [Section 11.4 \(No Special Damages\)](#) and applicable law, notwithstanding anything in this Agreement to the contrary, each Party's entire liability to the other Party concerning performance or non-performance by either Party, including Losses or in any way related to the subject matter of this Agreement, and regardless of whether a claim is based in contract, negligence, tort, strict liability, or other legal or equitable theory will not exceed, in the aggregate, the lesser of one year of fees earned by Corestream under this agreement or \$350,000. The limitations set forth in the immediately preceding sentence will apply notwithstanding the failure of the essential purpose of any limited remedy.

**11.6. Mitigation.** Each Party has a duty to mitigate any damages or losses (including the Losses) that would otherwise be recoverable from the other Party pursuant to this Agreement by taking commercially reasonable actions to reduce or limit the amount of such damages and losses, as applicable.

**11.7. Basis of the Bargain.** Client acknowledges and agrees that Corestream has set its prices and entered into this Agreement in reliance upon the disclaimers, exclusions, and the limitations of liability set forth herein, that such disclaimers, exclusions, and limitation of liability reflect an allocation of risk between the Parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that such disclaimers, exclusions, and limitation of liability form an essential basis of the bargain between the Parties, and, absent any of such disclaimers, exclusions, or limitations of liability, the provisions of this Agreement, including, without limitation, the economic terms, would be substantially different.

**11.8. No Double Recovery.** Notwithstanding anything in this Agreement to the contrary, no indemnified party will be entitled to indemnification or reimbursement under any provision of this Agreement for any amount to the extent such party has been indemnified or reimbursed for such amount under any other provision of this Agreement or otherwise.

## **12. GENERAL PROVISIONS.**

### **12.1. Governing Law and Disputes.**

**12.1.1. Governing Law.** Any questions, claims, disputes, or litigation arising from or related to the making, performance, or alleged breach of this Agreement, or to any available remedies (each a "**Dispute**"), will be governed by and construed in accordance with the laws of the State of Florida, without regard to conflict of laws principles.

### **12.1.2. Dispute Resolution.**

**(a)** In the event that a Dispute relating to this Agreement arises between the Parties, either Party will, by written notice, call a meeting regarding the Dispute to be attended (in person or by phone) by executive officers of each Party, with authority to settle the Dispute, who will attempt in good faith, to resolve the Dispute. All negotiations pursuant to this [Section 12.1.2](#) will be confidential and will be treated as compromise and settlement negotiations for purposes of the applicable rules of evidence to the fullest extent permitted under such rules.

(b) If the Dispute cannot be resolved through negotiation pursuant to Section 12.1.2(a), then the Parties will proceed to arbitration. The Parties agree that such arbitration will be administered by the American Arbitration Association (“**AAA**”) under its Commercial Arbitration Rules in effect at the time of filing of the demand for arbitration, with the following modifications: (i) arbitration must occur within 120 calendar days after a Party submits the Dispute to arbitration; (ii) the hearing will be conducted by one arbitrator, experienced and knowledgeable in insurance and information technology law who has practiced law for at least 10 years, who will be agreed to by the Parties within 30 calendar days of receipt of the demand for arbitration, and if the Parties cannot agree on an arbitrator within such time period then, at the request of either Party, such arbitrator will be appointed by the AAA; (iii) the hearing will be conducted on a confidential basis without continuance or adjournment; (iv) the arbitrator will have absolutely no authority to award consequential, treble, exemplary, or punitive damages of any type under any circumstances; and (v) the arbitrator will decide the case based on this Agreement, and where this Agreement does not resolve an issue, based on federal and applicable State of Florida law. Further, except as set forth in Section 12.1.3 (Court Action), the Parties authorize the arbitrator to grant any emergency, temporary, preliminary, or permanent equitable remedy or relief the arbitrator deems just and equitable and within the scope of this Agreement, including as contemplated in Section 12.2 (Equitable Relief), and may modify a ruling for preliminary relief before or concurrently with the arbitration hearing.

**12.1.3. Court Action.** Notwithstanding Section 12.1.2 (Dispute Resolution), either Party may pursue through litigation claims in litigation commenced by third parties. For any litigation contemplated in this Section 12.1.3, the Parties consent to the exclusive jurisdiction and venue of the federal and state courts residing in Hillsborough County, Florida, and each Party waives any objection that it may have based on improper venue or forum *non conveniens* to the conduct of any such action or proceeding in such court. FURTHER, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY JURIDICAL PROCEEDING PERMITTED UNDER THIS AGREEMENT.

**12.2. Equitable Relief.** Notwithstanding Section 12.1.2(a), if a Party determines, in good faith, that a breach or threatened breach of the terms of this Agreement by the other Party would result in irreparable harm, such that a temporary restraining order or other form of injunctive relief is the only appropriate and adequate remedy, such Party may proceed directly to arbitration in accordance with Section 12.1.2(b).

**12.3. Severability.** The provisions of this Agreement are severable. Accordingly, any provision of this Agreement that is held to be invalid by an arbitrator or a court of competent jurisdiction will be severed from this Agreement, and the remaining provisions will remain in full force and effect.

**12.4. Modification, Waiver, and Purchase Orders.** No modification to this Agreement, nor any waiver of any rights, will be effective unless consented to in a writing signed by both Parties and the waiver of any breach or default will not constitute a waiver of any other right or any subsequent breach or default. A Party’s failure to enforce any of its rights hereunder will not constitute a waiver of its future enforcement of such rights or any other rights. Any terms and conditions stated on a Client invoice, purchase order, or the like, whether delivered by Client prior to or subsequent to this Agreement are only for Client’s administrative purposes and are hereby expressly disclaimed. No terms and conditions of any Client invoice, purchase order, or the like will apply to, or be binding upon, Corestream.

**12.5. Assignment.** This Agreement will be binding upon and inure to the benefit of each of the Parties, their successors and permitted assigns. Neither Party may assign or transfer this Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement, without the prior written consent of the other Party, if such assignment is to: (a) a wholly owned subsidiary of the assigning Party, or (b) an entity that has acquired all or substantially all of the assigning Party’s assets as a successor to the business of the assigning Party (whether by way of merger, reverse merger, consolidation, sale and purchase of assets or otherwise) and such entity has agreed in writing prior to the effective date of such assignment to be bound by and to perform in accordance with this Agreement as if it were the assigning Party. Any attempted assignment in violation hereof will be void.

**12.6. Independent Contractors.** The Parties are independent contractors, and no agency, partnership, franchise, joint venture or employment relationship is intended or created by this Agreement. Neither Party will make any warranties or representations on behalf of the other Party.

**12.7. Entire Agreement.** This Agreement and each of its attachments, exhibits, and the Addenda, each incorporated herein by reference and made part hereof, constitutes the Parties’ entire agreement and understanding relating to the subject matter hereof, and supersedes all prior or contemporaneous communications between the Parties, whether written or oral, with respect to the subject matter hereof.

**12.8. Notices.** Any notice under this Agreement will be in writing and delivered by personal delivery, overnight courier, confirmed fax, confirmed email, or certified or registered mail, return receipt requested, and will be deemed given upon personal delivery, 1 day after deposit with an overnight courier, 5 days after deposit in the mail, or upon confirmation of receipt of fax or email by the receiving Party, addressed to the address set forth in the signature block.

**12.9. Force Majeure.** Except for payment or the Broker of Record Letter obligations hereunder, neither Party will be liable for failure or delay to perform under this Agreement if such failure or delay is caused by the occurrence of any contingency beyond such Party's commercially reasonable control (a "**Force Majeure Event**"). The Party experiencing a Force Majeure Event will promptly notify the other Party and will resume performance as soon as practicable under the circumstances.

**12.10. Counterparts and Headings.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement and any Addendum issued pursuant thereto that requires a signature may be executed using electronic signatures, and such electronic signatures will be deemed to constitute original signatures. Transmission by fax or email of an executed counterpart to any such document will be deemed due and sufficient delivery of such counterpart, and a photocopy of an executed counterpart sent by fax or email may be treated by the Parties as a duplicate original. A copy of a Party's signature will be deemed to be its original signature for all purposes hereunder. The Section headings used in this Agreement are for convenience of reference only. They will not limit or extend the meaning of any provision of this Agreement, and will not be relevant in interpreting any provision of this Agreement.

**12.11. Jointly Drafted.** The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions of this Agreement.

*[Remainder of Page Intentionally Left Blank]*

**EXHIBIT A**  
**BROKER OF RECORD LETTER**

**EXHIBIT B**  
**FEATURED PROVIDERS**

- Accident Insurance: TBD
- Auto Insurance: Liberty Mutual, MetLife, Travelers
- Critical Illness: TBD
- Employee Discounts: Corestream
- Employee Finance: TBD
- Home & Renters Insurance: Liberty Mutual, MetLife, Travelers
- ID Theft: TBD
- Legal Plans: TBD
- Long Term Care: TBD
- Payroll Purchasing Programs: TBD
- Pet Insurance: TBD

## **EXHIBIT C**

### **FEES**

Corestream will be compensated for the services by each individual Provider.

- [No setup, special, or additional fees defined at this time.]
- If Client changes its technology infrastructure (including, without limitation, payroll providers) after the initial Corestream implementation has been completed or at any other time during the Term and such changes cause Corestream to incur additional costs to perform the services hereunder, Client will pay Corestream a \$75,000 (or such other amount as the Parties may mutually agree in advance in writing) change order fee for each such infrastructure change to cover the implementation work required to build, test, and implement the previously established deduction request and deduction confirmation files. Corestream will invoice the change order fee, with payment due on a Net 30 basis via ACH, EFT as detailed on the invoice, or via alternative means as mutually agreed in advance in writing.

## **EXHIBIT D**

### **PROMOTIONAL COMMITMENT**

- Quarterly Home Mailings to all eligible Employees (subject to carrier support)
- Corestream will send quarterly email campaigns to all eligible Members (to include open enrollment communications where applicable)
- Inclusion of voluntary benefit information in other benefit communications created by the client
- Inclusion of voluntary benefit information in Benefit Fairs
- Client to provide email addresses of eligible Members to Corestream and to whitelist the Corestream domain

## **EXHIBIT E**

### **MEMBER ACCESS COMMITMENT**

- Link on Corporate Intranet, Benefits Website and/or employee portal
- Enrollment for Legal and Critical Illness, Accident, Hospital Indemnity managed on Core Medical Enrollment system as part of Core Benefit election process (file to be sent to Corestream post enrollment for processing).