



ADMINISTRATIVE SERVICE AGREEMENT

RECITALS

[Company Name] (“Employer”) engages Maestro Health (“ASA”) to act on its behalf in furnishing certain administrative services as described in this Service Agreement, the Appendices and Amendments hereto (collectively, the “Agreement”).

In consideration of the mutual promises and covenants contained herein, Employer and ASA hereby agree to the terms and conditions contained in this Agreement.

ARTICLE I. INTRODUCTION AND SCOPE OF SERVICES

1.1 Effective Date and Term

This Agreement is effective [Date] (“Effective Date”) and will continue for an initial term of three (3) years (unless otherwise stated in an Appendix or Amendment).

1.2 Scope of Services

ASA shall provide to Employer the Services outlined in each Appendix. If Employer requests Services in addition to the Services identified in any attached Appendix, such additional Services shall be agreed to in writing, attached hereto as a new Appendix or an Amendment to the appropriate Appendix and shall be provided pursuant to the terms and conditions of this Agreement.

1.3 Scope of Undertaking

Employer has sole, exclusive, and final authority and responsibility to control and manage the operations of the Plan. ASA is and shall remain an independent contractor with respect to the Services being performed hereunder and shall not for any purpose be deemed an Employee of Employer. Nor shall ASA and Employer be deemed partners, engaged in a joint venture or governed by any legal relationship other than that of the independent contractor.

1.4 Definitions

Certain capitalized terms used in the Agreement shall have the meanings set forth as follows:

“**Agreement**” means this Service Agreement, including all Appendices and Amendments hereto and as defined in the Recitals.

“**Appendix**” means an exhibit designed and attached to this Agreement. Each Appendix will: (i) describe the tasks to be performed in connection with the Services outlined on that Appendix and (ii) include the Fees and Expenses to be charged by ASA for the Services outlined.

“**Business Associate**” means the term given under the privacy regulations issued pursuant to HIPAA. Included in this agreement as Appendix Z.

“**Discovery Document**” means the description of the detailed specifications, rules, and procedures identified to support the ASA services listed in the Appendices.

“**Effective Date**” has the meaning given in Section 1.1.

“**Employer**” has the meaning given in the Recitals and represents a client of the ASA.

“**Expenses**” includes costs designated in any Appendix to this Agreement including pass-through costs, and out-of-pocket costs (including travel, lodging, ground transportation, meals and related costs) that are incurred by ASA in connection with providing Services.

“**Fees**” means the sum of the ASA Fees and charges incurred by Employer for Services pursuant to the terms and conditions of this Agreement (but excluding Expenses).

“**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996, as amended.

“**Litigation**” means any litigation or other proceeding including but not limited to any judicial or administrative proceeding involving a dispute arising under this Agreement, or an audit or proceeding by the Internal Revenue Service or the United States Department of Labor involving directly or indirectly the duties or responsibilities of the Employer or the ASA.

“**Party**” means the Employer and the ASA, each of which may be referred to in the singular or in the plural.

“**Protected Health Information**” or “**PHI**” has the meaning assigned to such term under HIPAA.

“**Services**” means the list of Services described in this document or any Appendix, including the Discovery Document, which sets forth the Services being provided or performed by ASA under this Agreement.

“**ASA**” has the meaning given in the Recitals.

ARTICLE II. EMPLOYER RESPONSIBILITIES

2.1 Sole Responsibilities

(a) *General.* Employer is the Plan Sponsor and has the sole authority and responsibility for the Plan and its operation, including the authority and responsibility for administering, construing and interpreting the provisions of the Plan and making all determinations thereunder.

(b) *Security.* Employer shall implement appropriate security procedures designed to prevent unauthorized access to ASA systems. When on site at ASA premises, Employer personnel shall observe and adhere to ASA policies and procedures applicable to visitors of ASA.

2.2 Information to ASA

Employer shall cooperate with ASA and make promptly available such information, assistance and cooperation as reasonably required by ASA to enable ASA to fulfill its obligations and responsibilities under this Agreement. In performing its obligations and responsibilities under this Agreement, ASA shall be entitled to rely on Employer decisions and data provided to ASA. Such information shall be provided to ASA in the time and in the manner agreed to by Employer and ASA. ASA shall have no responsibility with regard to errors in reporting due to Employer’s failure to accurately report or timely update such information.

Employer agrees that if Employer provides ASA with specific written instructions to provide services in a manner other than in accordance with ASA’s standard procedures or consultation, ASA will comply with Employer’s written instruction, provided that, if ASA complies with such instruction Employer and not ASA shall be solely responsible for ASA’s actions, and Employer agrees to hold ASA harmless and expressly releases all claims against ASA in connection with any claim or cause of action which results from or in connection with ASA’s following Employer’s written instructions.

2.3 Indemnification

Employer shall indemnify ASA and hold it harmless from and against all loss, liability, damage, expense, attorneys’ fees or other obligations, resulting from, or arising out of, any act or omission of Employer in connection with the services performed hereunder.

Employer will not be obligated to indemnify ASA if it is determined that a judgment, determination or settlement in litigation was paid as a result of an act or omission by ASA that was:

- (a) criminal or fraudulent;
- (b) an intentional disregard of ASA’s obligation under this Agreement; or
- (c) grossly negligent.

Notwithstanding the foregoing, Employer will indemnify and hold ASA harmless to the extent Employer concurred in, instructed, directed, or caused such acts or omissions by ASA.

2.4 Fees and Expenses

Employer shall pay ASA the Fees and Expenses set forth in the Appendices hereto, as described in Article IV.

ARTICLE III. ASA RESPONSIBILITIES

3.1 Sole Responsibilities

ASA shall act in accordance with the guidelines and other instructions provided by the Employer. ASA’s sole responsibilities shall be as described in this Agreement (including the obligations listed in any applicable Appendix to this Agreement or the Discovery Document). ASA shall not be required to provide legal services, investment services, professional accounting services, or collection services.

3.2 Compliance with Privacy and Security Rules under HIPAA

Upon the relevant HIPAA applicability dates with regard to Employer’s Plan, the provisions outlined below and in the Business Associate Agreement in Appendix Z will apply.

- (a) *Amendment to Comply with Privacy and Security Rules.* ASA agrees to amend Business Associate Agreement as is necessary from time to time to comply with the requirements of the privacy and security rules under HIPAA.
- (b) *Termination of Agreement.* ASA agrees to termination of this Agreement by Employer if the terms of this Section 3.2 are violated. In addition, at termination of this Agreement, ASA agrees to return or destroy all PHI received by ASA under this Agreement or, to the extent that it is not feasible, to continue to limit the further uses and disclosures of that information as provided by this Section.

3.3 Recordkeeping

ASA shall maintain, for the duration of this Agreement, the usual and customary books, records and documents, including electronic records that relate to the services provided that the ASA has prepared or that have otherwise come within its possession. These are the property of Employer and Employer has the right of continuing access to them during normal business hours at ASA's offices with reasonable prior notice. If this Agreement terminates, ASA will not be responsible for storing copies of Employer's records and will deliver all such records, subject to ASA's right to retain copies of any records it deems appropriate. If documents are stored by ASA, they will be retained for five years at the location designated by the ASA. Notwithstanding however, that ASA must destroy or return to Employer all PHI. If it is infeasible to return or destroy PHI received from Employer, or created or received by ASA on behalf of Employer, ASA shall provide to Employer notification of the conditions that make return or destruction infeasible. Upon Employer's agreement that return or destruction of PHI is infeasible, ASA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as ASA retains such PHI. ASA shall pay all storage charges for any such PHI for so long as ASA retains such PHI.

3.4 Additional Services

ASA and Employer may agree to additional Services in writing as may be specified in the Appendices or Amendments.

3.5 Indemnification

ASA agrees to indemnify and hold harmless Employer from and against any and all claims, suits, actions, liability, losses, damages, costs, charges, expenses, judgments, and settlements that Employer sustains as a result of any act or omission of ASA in connection with the performance of services under this Agreement.

ASA will not be obligated to indemnify Employer if it is determined that a judgment, determination, or settlement in litigation was paid as a result of an act or omission by Employer which was:

- (a) criminal or fraudulent;
- (b) an intentional disregard of Employer's obligation under this Agreement; or
- (c) grossly negligent.

Notwithstanding the foregoing, ASA will indemnify and hold Employer harmless to the extent ASA concurred in, instructed, directed, or caused such acts or omissions by Employer.

3.6 Force Majeure

ASA shall not be liable for any delay in or failure of performance under this Agreement due to causes beyond its reasonable control, including, but not limited to, natural disasters, an act of God, labor controversy, war or armed conflict, civil disturbance, act of an extremist or public enemy, sabotage, labor dispute, explosion, fire, flood, storm, accident, drought, equipment failure, power failure, fuel or energy shortages, inability to obtain suitable and sufficient labor or material, delay of carriers, embargo, law, ordinance, act, rule or regulation of any government whether valid or invalid.

ARTICLE IV. ASA COMPENSATION

4.1 Fees and Expenses

The amount of the Fees and Expenses of ASA are described in the Appendices. The Fees for Services under this Agreement may be renegotiated in the event that substantial changes, including but not limited to Plan design changes, legislative or regulatory changes, or postal rate changes would increase or decrease the obligation or costs of providing Services.

4.2 Payment of Charges

Reference Appendix K for Service and Fee payment schedule.

4.3 Disputed Charges

Employer shall pay undisputed Fees and Expenses when such payments are due. Employer may withhold payment of specific charges on a given invoice that it in good faith disputes provided that Employer delivers to ASA a written statement on or before the date payment is due.

ARTICLE V. GENERAL PROVISIONS

5.1 ASA Software and System Services

ASA agrees to defend Employer and to pay any judgments, costs and expenses, attorney's fees, or amounts paid in settlement to which ASA agrees, which Employer may sustain as the result of any claim (Intellectual Property Claim) by a third party that the software and/or system services infringes or misappropriates such third party's United States copyright, trade secrets, or patent ("Intellectual Property Indemnity"). In order for ASA to provide its Intellectual Property Indemnity, Employer must provide ASA with prompt notice of such claims or threat of such claims and ASA must be given full control and authority to investigate, defend and/or settle such Intellectual Property Claim. In the event of any Intellectual Property Claim, ASA may, in its sole discretion, either procure the rights to allow Employer's continued use of the software and system services, or modify the software and system services so that it is not infringing on the claimed third party's rights. Should the Intellectual Property claim result in Employer's inability to use the software, then the Employer may terminate this Agreement and receive a pro-rated refund of any unearned fees actually paid. ASA shall indemnify and hold Employer harmless from any damages, costs, and expenses, including attorney's fees and expert witness fees for any Intellectual Property Claim."

5.2 Severability and Headings

If any term of this Agreement is declared invalid or unenforceable by a court, the same will not affect the validity of any other provision, provided that the basic purposes of this Agreement are achieved through the remaining valid provisions. The headings of Sections and subsections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

5.3 Assignment and Amendment

Neither Employer nor ASA can assign this Agreement, and Appendices or Amendments, without the other Party's written consent. This Agreement may be amended only by written agreement of duly authorized individuals of Employer and ASA.

5.4 Non-Waiver

Failure by Employer or ASA to insist upon strict performance of any provision of this Agreement will not modify such provision, render it unenforceable, or waive any subsequent breach. No waiver or modification of any of the terms or provisions of this Agreement shall be valid unless in each instance the waiver or modification is accomplished pursuant to the amendment provisions of Section 5.3.

5.5 Non-Disclosure of Proprietary Information

- (a) *General.* Employer and ASA each acknowledge that in contemplation of entering into this Agreement (and as a result of the contractual relationship created hereby), each Party has revealed and disclosed, and shall continue to reveal and disclose to the other, information which is proprietary and/or confidential information of such Party. Employer and ASA agree that each Party shall:
1. keep such proprietary and/or confidential information of the other Party in strict confidence;
 2. not disclose confidential information of the other Party to any third parties or to any of its Employees not having a legitimate need to know such information; and
 3. shall not use confidential information of the other Party for any purpose not directly related to and necessary for the performance of its obligations under this Agreement (unless required to do so by a court of competent jurisdiction or a regulatory body having authority to require such disclosure).
- (b) *Confidential Information Defined.* Information revealed or disclosed by a Party for any purpose not directly related to and necessary for the performance of such Party's obligations under this Agreement shall not be considered confidential information for purposes hereof:

1. if, when, and to the extent such information is or becomes generally available to the public without the fault or negligence of the Party receiving or disclosing the information; or
2. if the unrestricted use of such information by the Party receiving or disclosing the information has been expressly authorized in writing and in advance by an authorized representative of the other Party. For purposes of this Section, confidential information is any information in written, human-readable, machine-readable, or electronically recorded form (and identified as confidential and/or proprietary or words of similar import) and information disclosed orally in connection with this Agreement and identified as confidential and/or proprietary (or words of similar import); and programs, policies, practices, procedures, files, records, and correspondence concerning the parties' respective businesses or finances. The terms and conditions of this Section 5.6 shall survive the termination of this Agreement.

5.6 Arbitration and Litigation

Any controversy or claim arising out of or relating to this Agreement between Employer and ASA, or the breach thereof, shall be subject to non-binding arbitration prior to the filing of a complaint in a court of law; provided, however, that such arbitration shall be final and binding and may be enforced in any court with the requisite jurisdiction if the parties agree in advance, in writing, that such arbitration shall have final, binding effect. All arbitration, whether binding or non-binding, shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Unless the arbitrator rules state otherwise, Employer and ASA shall jointly and equally pay the expenses of the arbitrator and assessed administrative costs, as well as their own expense incurred during the dispute resolution process. The arbitration shall take place in Oakland County in the State of Michigan.

In the event of litigation, Employer and ASA each:

- (a) reserve the right to select and retain counsel to protect its interests;
- (b) will notify the other Party concerning the existence of such litigation promptly upon learning of such litigation;
- (c) will cooperate fully by providing the other Party with all relevant and unprivileged information and documents within its possession or control; and
- (d) will reasonably assist the other Party in preparation for litigation and in the defense of litigation.

5.7 Notices and Communications

All notices, requests and communication to the Parties shall be in writing (including email) and shall be given to the Parties at their respective address.

- (a) *Addresses.* Employer's and ASA's address for notices are at the end of this Agreement.
- (b) *Communications.* Employer agrees that ASA may communicate confidential, protected, privileged or otherwise sensitive information to Employer through a named contact designated by Employer and specifically agrees to indemnify ASA and hold it harmless:
 1. for any such communications directed to Employer through the named contact attempted via fax, mail, telephone, email or any other media, acknowledging the possibility that such communications may be inadvertently misrouted or intercepted; and
 2. from any claim for the improper use or disclosure of any PHI by ASA if such information is used or disclosed in a manner consistent with its duties and responsibilities hereunder.

5.8 Termination of Agreement

- (a) *Automatic.* This Agreement shall automatically terminate as of the earliest of the following:
 1. the effective date of any legislation which makes this Agreement illegal or not required; or
 2. the date Employer or ASA becomes insolvent, or bankrupt, or subject to liquidation, receivership, or conservatorship.
- (b) *Optional.* This Agreement may be terminated by:
 1. ASA upon the failure of Employer to pay any charges within thirty (30) business days after they are due and payable as provided in Article IV;
 2. ASA, with ninety (90) days written notice, upon the material breach of the Employer to perform its obligations in accordance with this Agreement; or
 3. Employer, with ninety (90) days written notice, upon the material breach of the ASA to perform its obligations in accordance with this Agreement; or
- (c) *Early.* Early termination of this Agreement for reasons other than those stated above shall result in a payment obligation by the Employer or successor Employer to the ASA of seventy-

five percent (75%) of the estimated remaining Fees for the term of the standing Agreement and one hundred percent (100%) any incurred Expenses up to the date of termination.

- (d) *Limited Continuation After Termination.* If the Agreement is terminated, Employer and ASA may mutually agree in writing that this Agreement or its Amendment shall continue for the purpose of Services initiated prior to the date of termination or assistance with transition to another service provider. If this Agreement is continued in accordance with this subsection (d), Employer shall pay the monthly service charges incurred during the period that this Agreement is so continued.
- (e) *Survival of Certain Provisions.* Termination of this Agreement shall not terminate the rights or obligations of either Party arising out of a period prior to such termination. The indemnity, confidentiality, privacy, and security provisions of this Agreement shall survive its termination.

5.9 Complete Agreement and Governing Law

This Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance, or otherwise, by the laws of the State of Wisconsin. Any suit, proceeding, administrative review or other action arising out of or related to this Agreement shall be commenced and maintained only in a court of competent jurisdiction in the state or federal courts or an administrative agency located in Milwaukee County, Wisconsin. Each Party irrevocably consents to submit to the exclusive jurisdiction of such administrative agencies and/or

5.10 Warranties

Employer and ASA represent and warrant that they have the requisite power and authority to enter into this Agreement and to make the commitments set forth in this Agreement and that they are not a party to any other agreement which would hinder their ability to perform the obligations hereunder.

IN WITNESS WHEREOF, Employer and ASA have executed this Agreement in their names by their undersigned individuals, the same being duly authorized to do so, as of the date set forth below.

[Company Name], as Employer

Maestro Health, as ASA

By: _____

By: _____

Its: _____

Its: _____

30800 Telegraph Road, Suite 3800
Bingham Farms, MI 48025

Date signed _____

Date signed _____

APPENDIX J
APPLICABLE LARGE EMPLOYER REPORTING - TOTAL SOLUTION

Employer ALE Reporting Responsibilities

- A. Assist ASA in completing Discovery Document with accurate information to set up reporting rules/requirements.
- B. Provide the required individual demographic and benefit information for eligible individuals, as outlined and documented in the standard import file layout for the initial data load and any applicable look back/historical loads.
- C. Provide ongoing employee demographic and benefit information files at the frequency of a mutually agreed upon schedule.
- D. Report any changes affecting the employee's eligibility on the ongoing data files.
- E. Report any changes that affect the format of the ongoing file.
- F. Assist ASA in identifying data sources for any potential data not located in employer's payroll/HRIS system.
- G. Review and work missing data and error reports provided by ASA and correct any errors identified on the reports either on the next file or provide updates to ASA for manual updates.

ASA ALE Reporting Responsibilities

Implementation and Ongoing Administration

- A. Complete Discovery document to gather Employer rules/requirements and receive client sign off.
- B. Provide an implementation plan and timeline.
- C. Consult with file vendors and provide a detailed file layout applicable to the identified data sources.
- D. Consolidate data from multiple sources.
- E. Configure business rules to interpret the demographic data.
- F. Aggregate any employer groups for control group consolidation.
- G. Map demographic and benefit information to our proprietary system.
- H. Test initial import files and complete data audits to ensure the required data is provided
- I. Provide applicable feedback to Employer and/or file vendor(s).
- J. Load initial import file and provide any applicable error reports and missing data reports to Employer and/or file vendor(s).
- K. Derive applicable codes based on the information provided by the employer and/or file vendor(s).
- L. Calculate and maintain the employee counts for Form 1094-C reporting.
- M. Maintain transition relief data, if applicable.
- N. Provide ongoing compliance consulting on employer reporting changes.
- O. Provide one web based session of training for Employer on system functionality.
- P. Provide Employer with toll free number and provide call center for employee inquiry support. Call center will operate during normal business hours, 8:00am to 5:00pm eastern, Monday through Friday.
- Q. Provide IRS inquiry support when requested.
- R. Transmit Form 1094-C on behalf of Employer following IRS published procedure.
- S. Print and Fulfill Form 1095-C following IRS published procedure, if contracted.
- T. Initiate dependents Social Security Number (SSN) solicitation (if applicable) and store solicitation request documents.

Dependent Social Security Number (SSN) Solicitation (if applicable)

- A. Identify employees with dependents that have missing SSNs.
- B. Send ASA's standard solicitation letter to the employee's home via USPS requesting missing SSNs.
- C. Attached and store initial solicitation letter to applicable employee's record.
- D. Update individual records with dependent SSN when provided.
- E. Identify employee records thirty days after initial solicitation that have not been updated with SSNs.
- F. Send ASA's second solicitation letter to employees' homes via USPS requesting missing SSNs.
- G. Attached and store second solicitation letter to employees' records.
- H. Identify employee records thirty days after second solicitation that have not been updated with SSNs.
- I. Send ASA's third solicitation letter to employees' homes via USPS requesting update to SSNs.
- J. Attached and store third solicitation letter to employees' records.
- K. All returned mailed will be returned to Employer with a request for updated addresses.

APPENDIX K
SERVICE FEES AND EXPENSES

The following Fees and Expenses are based on a three year Agreement for the provision of services defined in the referenced Appendices with an Effective Date of **Date**.

SERVICE	TOTAL SOLUTION
Discovery and Implementation	\$3,500
System Configuration Initial eligibility group configuration Additional eligibility group configurations	\$2,000 \$500 per group
Data Conversion EDI (including payroll) imports in standard format Additional EDI (including payroll) imports in standard format Programming of non-standard or custom file formats Manual data entry	Includes two ongoing imports \$1,750 per import \$150 per hour \$60 per hour
Ongoing Support and Training ACA Reporting Consultation Additional ACA Reporting Consultation Employer Training Guide Web Training Onsite Training	Included Included Included Includes one session \$1,000 per day plus expenses
Ongoing Maintenance Ongoing data imports, coding, data storage IRS inquiry support Employee service center support	\$3.50 per 1095-C Included Included
Fulfillment Form 1094-C Transmittal Form 1095-C Print and Fulfillment Postage for first-class mail	Included \$1.50 per statement Pass-Through
Dependent SSN Solicitation Sending of ASA's standard solicitation letter up to three times to employee's home via USPS requesting update to SSN(s). Storing of solicitation letters to employee's record.	\$25.00 per solicited employee One time charge
Annual Renewal	\$2,000

[Company Name], as Employer

Maestro Health

By: _____

By: _____

Its: _____

Its: _____

30800 Telegraph Road
Suite 3800
Bingham Farms, MI 48025

Date signed _____

Date signed _____

APPENDIX Z

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT ("BA Agreement") is by and between the covered entity identified below as the Company and the business associate identified as Maestro Health ("Maestro Health") (collectively, the "Parties").

WITNESSETH:

WHEREAS, the Company and Maestro Health have entered into this BA Agreement for the provision by Maestro Health to the Company of certain functions and activities (the "BA Services") on the Covered Entities' behalf; and

WHEREAS, both Parties are committed to complying with the requirements of the Privacy Rules (as set forth in 45 CFR Parts 160 and 164, subparts A and E), the Security Rules (as set forth in 45 CFR Parts 160 and 164, subparts A and C), the Breach Notification Rules (as set forth in 45 CFR Parts 160 and 164, subparts A and D), the Enforcement Rules (as set forth in 45 CFR Part 160), and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191 and its implementing regulations codified as 45 CFR § Parts 160 and 164) and the regulations promulgated thereunder, all as amended from time to time collectively, "HIPAA Rules", the Company is entering into written confidentiality agreements with its service providers (referred to as "Business Associates" in the HIPAA Rules) if those providers receive Protected Health Information ("PHI"), having the same meaning as defined in 45 CFR § 160.103 but limited to the information created, received, maintained, or transmitted by Maestro Health from or on behalf of the Company; and

WHEREAS, in performance of the BA Services, the Company may send PHI to Maestro Health, and Maestro Health may receive, use, create, transmit, or maintain Protected Health Information or electronic Protected Health Information ("ePHI"), having the same meaning as defined in 45 CFR § Part 160.103 (collectively, "PHI") on behalf of the Company; and

WHEREAS, the Company wishes to comply with the applicable requirements of the HIPAA Rules and the Health Information Technology for Economic and Clinical Health Act ("HITECH Act") as enacted as part of the American Recovery and Reinvestment Act of 2009 ("ARRA") and Maestro Health is willing to agree to such covenants as applicable to business associates, as a condition of the continuation of the BA Services.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intended to be legally bound hereby, the Parties hereto agree as follows:

1. **HIPAA Business Associate Agreement.** If, and to the extent, and for so long as, required by the provisions of the HIPAA Rules, Maestro Health will appropriately safeguard all Company PHI. This BA Agreement constitutes a business associate agreement between the Company and Maestro Health establishing the permitted and required uses and disclosures of Company PHI by Maestro Health. Except as otherwise limited in this BA Agreement, Maestro Health may use or disclose Company PHI provided that such use and disclosure would not violate the Privacy Rules if done by the Company.

2. **Duties of Business Associate.** Without limiting the provisions of Section 1 above, Maestro Health agrees that it shall:

a. Use or disclose Company PHI solely (i) to perform its obligations on behalf of or to benefit the Company, provided that such use or disclosure would not violate the HIPAA Rules or the HITECH Act if done by Company, or (ii) as otherwise specifically permitted or required by this BA Agreement, or (iii) as an enrollee authorizes, or (iv) as required by law (having the same meaning as defined in 45 CFR § 164.103);

b. Use reasonable efforts to use, to disclose, and to request only the minimum necessary amount of PHI required to accomplish the purpose of the request as provided in accordance with the HIPAA Rules;

c. Develop, implement, maintain and use appropriate administrative, physical, and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the privacy of PHI from any intentional or unintentional use or disclosure in violation of the Privacy Rules and limit incidental uses or disclosures made pursuant to a use or disclosure.

d. Use appropriate administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that it creates, receives, maintains, or transmits on behalf of the Company as required by the Security Rules and any additional Security Rule requirements contained in the HITECH Act and the related regulations of 45 CFR § 164, subpart D, as well as any guidance issued by the Secretary of Health and Human Services that specifies secure technologies and methodologies as applicable;

e. Not transfer PHI outside the United States without the prior written consent of the Company.

f. Not use or disclose genetic information (as set forth in 45 CFR § 160.103) for underwriting purposes in violation of the HIPAA Rules.

g. Report to Company's Privacy Officer, within 30 calendar days, any use, disclosure, or Breach of Company PHI or ePHI not provided for by this BA Agreement and/or any security incident (having the same meaning as defined in 45 CFR § Part 164.304) or the HITECH Act ("Accountability Disclosures") of which Maestro Health becomes aware in accordance with 45 CFR § 164.410. To the extent that any such reportable occurrence involves a Breach of Unsecured PHI (the same meaning given those terms under 45 CFR § 164.402), Maestro Health upon discovery of such Breach, shall notify the Company and the Company may, in its sole discretion, opt to take over the Breach responsibilities. Maestro Health shall cooperate with the Company to conduct any risk assessment necessary to determine whether notification of Breach is required and maintain any records related to such Breach. At the Company's request, Maestro Health shall provide notice to impacted Individuals (having the same meaning as defined in 45 CFR § 160.103 and to include a person who qualifies as a Personal Representative in accordance with 45 CFR § 164.502(g)). The Company shall maintain responsibility for notification to the media and the Secretary in the time and manner required by Section 13402 of ARRA and 45 CFR Sections 164.404, 406 and 408. Maestro Health shall maintain complete records needed for the annual notification to the Secretary and provide them to the Company for reporting. For purposes of this section, a Breach shall be treated as discovered as of the first day that Maestro Health (including its employees, workforce members, officer or agents, except the person who committed the Breach) knows of, or should reasonably have known of such Breach;

h. Ensure that any agents, including subcontractors (having the same meaning as defined in 45 CFR § 160.103), to whom Maestro Health provides Company PHI, agree in writing to the same restrictions and conditions that apply to Maestro Health through this BA Agreement with respect to such information and shall ensure that any agents or subcontractors agree to implement reasonable and appropriate safeguards to protect Company PHI;

i. Provide access, within 25 calendar days, at the request of the Company or an Individual, to Company PHI in a Designated Record Set (as such term is defined in the HIPAA Rules), or as directed by the Company, to the Individual subjects thereof, for the purposes of inspection and copying, to the extent required by 45 CFR § 164.524 and where applicable the HITECH Act. Any request for access must be submitted on Maestro Health' request forms and when required by the HITECH Act will be made available an electronic copy (in a form and format readily producible) if such information is in the custody and control of Maestro Health;

j. Make Company PHI maintained in a Designated Record Set available for amendment by the Individual subject thereof and upon written notice from the Company, incorporate any such amendments to Company PHI, to the extent required by 45 CFR § 164.526;

k. Document such disclosures of Company PHI and information relating to the disclosures of Company PHI as would be required for the Company to respond to a request by an

Individual for an accounting of disclosures of Company PHI in accordance with 45 CFR § 164.528 and Section 13405(c) of ARRA, unless such disclosure is excepted from accounting by the HIPAA Rules or the HITECH Act. Unless otherwise provided by the HITECH Act and/or any accompanying regulations, Maestro Health will maintain disclosure information for six (6) years following the date of the accountable disclosure. Any requests for a report of disclosure accounting must be submitted on Maestro Health' request forms;

l. Make available to the Company, within 55 calendar days, the information documented by Maestro Health in accordance with Section 2(h) hereof, so as to enable the Company to provide an Individual subject with an accounting of disclosures of the subject's Company PHI in accordance with 45 CFR § 164.528;

m. Consult with the Company before Maestro Health agrees to an Individual's request to restrict the use or disclosure of PHI related to the Individual that may affect Maestro Health' operations;

n. Accommodate an Individual's request for confidential communications (the use of reasonable alternative means or alternative locations when communicating PHI to them) pursuant to 45 CFR Sections 164.522 and 13405(a) of ARRA, if the Individual provides a clear statement that disclosure of all or part of the PHI could endanger the Individual;

o. Make Maestro Health' internal practices, books and records, including policies and procedures, relating to the use and disclosure of Company PHI available to the Secretary of the United States Department of Health and Human Services ("Secretary") or his designee for purposes of determining the Company's compliance with the HIPAA Rules, subject to attorney-client or other applicable legal privileges;

p. Mitigate, to the extent practicable, any harmful effects from the improper use and/or disclosure of PHI of which it becomes aware and to establish and implement procedures to sanction its employees who violate the provisions of this BA Agreement;

q. Comply with the prohibition on the sale of PHI as set forth in the HIPAA Rules.

r. Use and disclose PHI for marketing purposes only as expressly directed by or agreed to by the Company and in accordance with Section 13406(a) of ARRA and will not use or disclose PHI for fundraising purposes;

s. Comply with all applicable provisions of the Standards for Electronic Transactions Rule (meaning the final regulations issued by the Department of Health and Human Services concerning standard transactions and code sets under 45 CFR Parts 160 and 162) to the extent required by law for the transmittal or receipt of any Covered Electronic Transactions (having the meaning given the term "Transaction" in 45 CFR § Part 160.103) on behalf of the Company and shall ensure that any agents that assist Maestro Health in conducting Covered Electronic Transactions on behalf of the Company agree in writing to comply with the Standards for Electronic Transaction Rule to the extent required by law; and

t. At termination of this BA Agreement, if commercially reasonable, will destroy or return to the Company, all Company PHI that Maestro Health still maintains in any form and retain no copies of Company PHI and upon request of the Company, Maestro Health will certify in writing to the Company that it has so returned or destroyed all such Company PHI. If such destruction or return is not commercially reasonable as to all or some Company PHI, Maestro Health shall extend the protection of this BA Agreement to such Company PHI in accordance with the records retention requirements under the Privacy and Security Rules and the Employee Retirement Income Security Act of 1974, as amended, and limit further uses and disclosures.

3. **Management and Administration of Maestro Health.**

a. Except as otherwise specifically limited in this BA Agreement, Maestro Health may use Company PHI for the proper management and administration of Maestro Health or to carry out the legal responsibilities of Maestro Health.

b. Except as otherwise specifically limited in this BA Agreement, Maestro Health may disclose Company PHI for the proper management and administration of Maestro Health, provided that disclosures are required by law, or Maestro Health obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Maestro Health of any instances of which it is aware in which the confidentiality of the information has been breached.

c. Except as otherwise limited in this BA Agreement, Maestro Health may use Company PHI to provide Data Aggregation services to the Company as permitted by 45 CFR § 164.504(e)(2)(i)(B).

d. Maestro Health may use Company PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

4. **Duties of the Company.** Company shall not request that Maestro Health use or disclose Company PHI in any manner that would not be permissible under the HIPAA Rules if done by the Company, except as specifically set forth in Section 3 of this BA Agreement. The Company shall also:

a. Provide Maestro Health with its Notice of Privacy Practices (the "Notice") that the Company provides to its participants in accordance with 45 CFR § 164.520, as well as any changes to or limitations in such Notice to the extent that the changes or limitations affect Maestro Health' use or disclosure;

b. Inform Maestro Health of any changes in, or revocation of, an authorization provided to the Company by an Individual pursuant to 45 CFR § 164.508, if such changes or revocation affect Maestro Health' permitted or required uses and disclosures;

c. Inform Maestro Health of any amendments to PHI that the Company has agreed to under 45 CFR § 164.526 that relate to PHI upon which Maestro Health relies to perform its BA Services; and

d. Inform Maestro Health of any arrangements the Company has agreed to that restrict disclosures or provide Individuals with confidential communication pursuant to 45 CFR § 164.522 that may have an impact on the use and disclosure of PHI by Maestro Health.

5. **Term.** This BA Agreement will commence upon the date when signed by the Parties and will terminate automatically upon termination of its BA Services, unless sooner terminated as provided in Section 6 below, or unless certain provisions of this BA Agreement are extended pursuant to Section 2(q) above.

6. **Termination.** Without limiting any right or remedy of the Company provided in other agreements, or available under applicable law (including but not limited to the HIPAA Rules) or in equity, the Company may terminate this BA Agreement immediately upon notice, without penalty or recourse to the Company, if the Company determines, in its sole discretion, that Maestro Health has breached any material term of this BA Agreement, provided that Maestro Health has failed to cure such breach within thirty (30) days (or within a reasonable time thereafter or in the event the breach is of a type that cannot reasonably be cured within thirty (30) days, provided that Maestro Health has commenced taking steps to effectuate a cure and thereafter takes reasonable steps to complete the cure within ninety (90) days) of its receipt of the Company's notice of such breach, describing the alleged breach with specificity.

In accordance with Section 13404(b) of ARRA, if Maestro Health knows of a pattern of activity or practice of the Company that constitutes a material breach or violation of this BA Agreement, Maestro Health shall provide the Company with a reasonable opportunity to cure the breach or terminate this BA

Agreement if cure is not feasible. If termination is not feasible, Maestro Health shall report the violation to the Secretary.

The provisions of this BA Agreement shall survive the expiration or any termination to the extent that Maestro Health continues to maintain PHI.

7. **Interpretation.** Any ambiguity in the BA Agreement shall be resolved to permit compliance with the applicable requirements under the HIPAA rules.

8. **Indemnification by Company.** Company, at its own expense, shall indemnify Maestro Health, its officers, and employees, and hold it harmless from and against all loss, liability, damage, expense, attorney's fees, or other obligations resulting from, or arising out of, any act or omission of Company in connection with a breach of any Company obligations, representations or warranties under this Agreement, including costs or expenses incurred in investigating any Breach of PHI. This provision shall not in any way limit any other indemnification that may be provided for in the other agreement(s) between Company and Maestro Health.

9. **Indemnification by Maestro Health.** Maestro Health, at its own expense, shall indemnify and hold harmless Company, its subsidiaries, affiliates, successors, and assignees, and their directors, officers, employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt, loss, or liability, including reasonable attorney's fees and costs, to the extent based upon a claim that any action or omission by its employee(s), agent(s), subcontractor(s), or representative(s) breaches any of Maestro Health' obligations, representations or warranties under this Agreement. Maestro Health' indemnity obligations include costs or expenses incurred by Company in investigating any Breach of PHI and providing all required notices. This provision shall not in any way limit any other indemnification that may be provided for in the other agreement(s) between Maestro Health and Company.

10. **Amendment.** In order to assure that this BA Agreement at all times remains compliant with regulations, the Parties agree to enter into written amendments to this BA Agreement from time to time upon written notice, if and to the extent, revisions are required to make this BA Agreement consistent with the HIPAA Rules, the HITECH Act, or other applicable regulations.

11. **No Rights of Third Parties.** This BA Agreement is between the Company and Maestro Health and shall not be construed, interpreted, or deemed to confer any rights whatsoever to any third party.

12. **Notices.** All notices related to any provision of this BA Agreement shall be via U.S. mail or express carrier to the designated privacy contact of each party at each party's current address.

13. **Definitions and Regulatory References.** Terms used, but not otherwise defined in this BA Agreement shall have the same meaning ascribed to them by the HIPAA Rules or in the HITECH Act. A reference in this BA Agreement to a section in the Privacy Rules, the Standard Transactions and Code Sets Regulations, the Security Rules, or the HITECH Act means the section as in effect or as amended, and for which compliance is required.

14. **Construction and Interpretation.** The section headings contained in this BA Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this BA Agreement. This BA Agreement has been negotiated by the parties at arm's-length and each of them has had an opportunity to modify the language. Accordingly, the BA Agreement shall be treated as having been drafted equally by the parties and the language shall be construed as a whole and according to its fair meaning. Any presumption or principle that the language is to be construed against any party shall not apply. This BA Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

15. **Severability.** The invalidity or unenforceability of any provisions of this BA Agreement shall not affect the validity or enforceability of any other provision of this BA Agreement, which shall remain in full force and effect.

16. **Entire Contract and Governing Law.** There are no other agreements or understandings, either oral or written, between the Parties relating to the subject matter hereof and this BA Agreement shall be governed by the laws of Michigan, except to the extent preempted by Federal Law.

IN WITNESS WHEREOF, the Parties have caused this BA Agreement to be executed by their authorized representatives.

MAESTRO HEALTH:

Date: _____ By: _____
Name: _____
Title: _____
Address: 30800 Telegraph, Suite 3800
Bingham Farms, MI 48025

COMPANY:

Date: _____ By: _____
Name: _____
Title: _____
Address: _____
