

**EMERGENCY RESOLUTION NO. 39-2017**

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT BY AND BETWEEN THE CITY OF MONROE AND HORAN ASSOCIATES, INC. FOR CONSULTING, ACTUARIAL, AND BROKERAGE SERVICES FOR THE CITY OF MONROE'S EMPLOYEE BENEFITS PROGRAM AND DECLARING AN EMERGENCY.

WHEREAS, following the receipt and review of proposals for an employee benefits broker/consultant, staff has recommended that Council enter into an agreement with HORAN Associates, Inc.

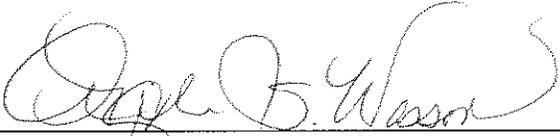
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: Council hereby authorizes the City Manager to enter into an agreement by and between the City of Monroe and HORAN Associates, Inc. for consulting, actuarial, and brokerage services for the City's employee benefits program pursuant to the terms and conditions set forth on Exhibit "A" attached hereto and made a part hereof.

SECTION 2: This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and further for the reason that Council desires to enter into the agreement at the earliest possible date and prior to the August 1, 2017, effective date of the proposal. Therefore, this measure shall take effect and be in full force from and after its passage.

PASSED: July 11, 2017

ATTEST:

  
\_\_\_\_\_  
Clerk of Council

APPROVED:

  
\_\_\_\_\_  
Mayor

I, the undersigned Clerk of Council of the city of Monroe, Ohio, hereby certify the foregoing (ordinance or resolution) was published as required by Section 7.16 of the Charter of the City of Monroe.

  
\_\_\_\_\_  
Clerk of Council  
City of Monroe, Ohio

This legislation was enacted in an open meeting pursuant to the terms and provisions of the Sunshine Law, Section 121.22 of the Ohio Revised Code.

## **HORAN Consulting Agreement**

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This Consulting Agreement, hereinafter referred to as "Agreement" is between City of Monroe, hereinafter referred to as "Client" and HORAN Associates, Inc., hereinafter referred to as "HORAN" and is effective during the Term set forth below;

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

WHEREAS, HORAN has superior knowledge and expertise in assisting employers with designing and servicing employee benefit plans; and

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

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

### **1. Scope of Services to be Provided by HORAN**

HORAN will provide Client with consulting, actuarial, and brokerage services as outlined in Schedule A for the compensation and benefit programs listed in Schedule A.

### **2. Term & Termination**

A. This initial term of this Agreement shall be one year, commencing on August 1, 2017 and ending July 31, 2018 ("Initial Term"). Thereafter, this Agreement will automatically renew for successive one year terms, unless terminated as set forth below.

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

- a) Effective upon 90 days advance written notice to the other party stating that such other party is in breach of any of the provisions of this Agreement, provided such breach (if able to be cured) is not cured within 15 days after the notice is received;
- b) Effective upon 90 days advance written notice to the other party given with or without reason; provided such notice is given after the Initial Term; or
- c) By mutual written agreement of the parties.

C. Upon termination of this Agreement, HORAN shall be entitled to retain all payments remitted to HORAN under this Agreement. Termination of this Agreement shall not terminate any payment obligation of Client under this Agreement for services provided prior to such termination. HORAN may be entitled to retain client materials until after Client pays all fees due and owing under this Agreement.

### **3. Cost of Services**

A. Client agrees to pay HORAN professional fees as outlined in Schedule B and deemed necessary by this Agreement. Professional fees are based upon time expended by specific individuals to perform work laid out in Schedule A.

B. These annual fees are payable in monthly installments and will be billed and collected by your in force medical insurance vendor.

C. Additional programs and services will be provided on a project basis for an additional fee to be disclosed in writing and shall be undertaken upon mutual agreement between HORAN and

Client. Such programs and services may include, but not be limited to, additional lines of insurance, special projects, outsourced wellness services, additional Request For Proposal (RFP) work, etc.

- D. Client shall reimburse HORAN for all reasonable expenses incurred by HORAN in the performance of its services, including, but not limited to, travel and lodging expenses, printing, postage, and communication charges.
- E. If Client in good faith disputes any amount in an invoice, Client should provide written notice of such dispute to HORAN as soon as reasonably possible, but in any event within 30 days after issuance of the invoice. Client and HORAN shall negotiate promptly and in good faith to resolve any dispute. Failure to pay an amount equal to or greater than 50% of the invoiced amount, including a disputed amount, within 30 days of the date of invoice will entitle HORAN, in addition to any other rights or remedies it may have, to suspend performance of the services under this Agreement. HORAN shall provide written notice of suspension to Client at least 5 business days prior to suspension, providing in such notice a right to cure the suspension within the 5 business days.

**4. Personnel**

HORAN will assign its personnel according to the needs of Client and according to the disciplines required to complete the appointed task in a professional manner. HORAN retains the right to substitute personnel with reasonable cause. The Account Management Team consists of the following roles:

- Primary Service Team: Account Executive  
Account Manager  
Client Specialist
- Additional Key Resources: Director – Financial Analysts  
Director – Individual Health and Medicare  
Director – Compliance  
Director – Health Management

**5. Disclosure and Record Keeping**

- A. HORAN may engage subcontractors to assist Client in the performance of its obligations under this Agreement. Client has the right to be informed of any arrangements and/or the utilization of any intermediaries in connection with, or arising out of, or in any way related to Client's insurance and risk management program. HORAN must notify Client prior to the use of any subcontractor in connection with the Client's insurance and risk management program.
- B. HORAN will maintain accurate and current files including, but not limited to, insurance policies and correspondence with insurers or brokers in accordance with industry standard record retention practice, the Health Insurance Portability & Accountability Act of 1996 or as otherwise directed by Client.

**6. Client's Responsibilities**

- A. Client shall make available such reasonable information as required for HORAN to conduct its services. Such data will be made available as promptly as possible. It is understood by HORAN that the time of Client's personnel is limited, and judicious use of that time is a requirement of this Agreement.
- B. Client agrees to notify HORAN as soon as possible of any proposed amendments to the plans' legal documents to the extent that the amendments would affect HORAN in the performance of its obligations under this Agreement. Client agrees to submit (or cause its agent, consultants,

or vendors to submit) all information in its (or their) control reasonably necessary for HORAN to perform the services covered by this Agreement.

- C. HORAN shall be entitled to rely upon any information and materials provided by Client. Client shall be solely responsible for the accuracy, adequacy, and integrity of materials and information provided to HORAN. HORAN shall not be responsible for verification of the accuracy, adequacy or integrity of any materials or information provided by Client nor shall HORAN be responsible for any errors due to reliance upon information provided by Client.
- D. Client shall at all times be responsible for any tax consequences in the establishment and operation of the plans.

## **7. Independent Contractor**

It is understood and agreed that HORAN is engaged by Client to perform services under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to create an employment, partnership or agency relationship between HORAN and Client. HORAN shall use its best efforts to follow written, oral, or electronically transmitted (i.e., sent via facsimile or e-mail) instructions from Client as to policy and procedure.

## **8. Limited Responsibilities**

- A. HORAN's sole responsibilities shall be as described in this Agreement, including the obligations listed in Schedule A. Client acknowledges that: (i) HORAN shall have no discretionary authority or discretionary control respecting the management of any of the employee benefit plans; (ii) HORAN shall exercise no authority or control with respect to management or disposition of the assets of Client's employee benefit plans; and (iii) HORAN shall perform services pursuant to this Agreement in an administrative non-fiduciary capacity. Client further acknowledges that HORAN neither insures nor underwrites any liability for the Client under any of its plans.
- B. Nothing contained, expressed or implied in this Agreement, nor any service performed by HORAN or communication by HORAN to Client in the process of performing services, is intended as, or is to be construed or understood as, legal advice, guidance or interpretation. No attorney-client relationship is established between HORAN and Client or any other person by reason of or arising from this Agreement or under any circumstances whatsoever. Client acknowledges that to the extent it desires or needs legal advice, guidance, or interpretation, it must secure appropriate legal counsel of its own choosing and at its own expense.

## **9. Proprietary Rights**

- A. Client and HORAN each acknowledge that in entering into this Agreement, 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. Client and HORAN agree that each party shall: (i) keep such proprietary and/or confidential information of the other party in strict confidence; (ii) 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 (iii) 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. Client owns and shall own all rights to Client's data provided to or accessed by HORAN, including such Client data as processed or manipulated by HORAN in connection with the Services. HORAN products will at all times remain the exclusive, sole and absolute property

of HORAN or the third parties from whom HORAN has obtained the right to use the HORAN products. All rights, title and interest in or to any copyright, trademark, service mark, trade secret, and other proprietary right relating to any HORAN products and the related logos, product names, etc. are reserved and all rights not expressly granted are reserved by HORAN and such third parties. Client may not obscure, alter or remove any copyright, trademark, service mark or proprietary rights notices on any HORAN products, and Client will not, and will require that its vendors and subcontractors will not, copy, recompile, disassemble, reverse engineer, or make or distribute any other form of or any derivative work from, the HORAN products.

**10. Limitation of Liability**

- A. HORAN shall indemnify and hold Client and its employees harmless from any and all loss, damage, liability, cost or expense (including reasonable attorneys' fees and expenses) which Client may suffer or incur in connection with the defense of any action, suit or proceeding (including settlement of same) in which it is made or threatened to be made a party by reason of any acts or conduct arising out of the performance of its duties under this Agreement, except in relation to matters as to which Client is grossly negligent or engages in willful misconduct in the performance of its duties. The aggregate and cumulative liability of HORAN for damages relating to or arising from this Agreement shall in no event exceed the portion of the fees paid by Client to HORAN under this Agreement for the 12-month period prior to the date in which the event giving rise to the claim first occurred.

**11. Miscellaneous Provisions**

- A. This, along with the attached Schedules, constitutes the entire Agreement between the parties, and any other warranties or agreements are hereby superseded. Subsequent amendments to this Agreement or the Schedules to this Agreement shall only be valid if in writing and signed by both parties.
- B. This Agreement shall be construed, enforced, and governed by the laws of the State of Ohio, except to the extent federal law supersedes such law.
- C. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, survivors, and assigns.
- D. Nothing express or implied in this Agreement is intended to confer, and nothing shall confer, upon any person other than the parties hereto any rights, remedies, obligations or liabilities whatsoever.
- E. A waiver by either party of any of the terms and conditions of this Agreement in any instance will not be deemed or construed to be a waiver of such terms or conditions for the future, or of any subsequent breach thereof.
- F. If any one or more of the provisions of this Agreement shall, for any reason, be invalid or illegal, such invalidity or illegality shall not affect any other provisions of this Agreement and this Agreement shall be enforced as if such invalid or illegal provision had not been contained herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement (including the attached Schedules) to be executed by their duly authorized officers.

HORAN Associates, Inc.

City of Monroe

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

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

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

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

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

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

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

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

## SCHEDULE A

### SCOPE OF SERVICES

Benefit Strategy and Action Plan – Develop strategic action plan that incorporates client objectives, marketplace innovation and renewal strategies to deliver best in class benefit programs.

- Leverage experts and resources within all of HORAN to assist you, including Financial Analysis, Compliance, Data Analytics, and Health Management
- Assess needs and make comprehensive recommendations
- Provide one and three year action plans

Benefit Design & Marketing – Lead and deliver benefit marketing, design and execution to support the overall benefit strategy.

- Lead market analysis and bid
- Recommend vendor/carrier partnership, contract and lead pricing negotiations
- Develop and recommend plan design options and contribution strategies
- Calibrate plan via benchmarking and historical review

Marketplace Benefit Innovation – Explore, vet and recommend marketplace innovations in trends and offerings to best meet unique client needs.

- Explore alternative funding arrangements
- Identify employee transparency tools to drive consumerism
- Research offerings that drive wellness executions and behavior changes
- Test advanced data analytic tools to drive deeper actions
- Explore technology solutions for employee engagement and administrative efficiencies
- Identify and execute international benefits
- Explore clinic options

Health Data Analytics – HORANalytics® – Dedicated think tank on a mission to investigate, understand, and control health care costs.

- Leverage data warehouse and utilization analysis to determine “why” in plan costs (self-funded only)
- Develop predictive models to guide future improvements in benefits strategy
- Develop standard and customized reporting to meet business needs
- Use data and analysis to help you meet client short and long term financial goals to improve bottom line

Population Health Management – Provides best practice in designing and implementing wellness programs that deliver long-term results to the company.

- Provide expert wellness program design consultation
- Deliver quantitative and qualitative evaluation of wellness program
- Lead market vendor assessment and program implementation

Employee Advocacy, Education & Engagement – Provide relentless care, advocacy and support for your organization, guiding you through the complex challenges of the healthcare system.

- Develop and deliver employee education and communication programs during open enrollment and throughout the year
- Provide direct and constant access to resolve employee concerns including claims
- Design holistic approach to meet the needs of client company culture and employees

Operational and Administrative Support – Collaborative service team of knowledgeable specialists committed to the shared value of supporting your employees and providing HR assistance on a daily basis.

- Act as benefit program vendor advocate on behalf of HR
- Provide day to day problem solving around renewals, compliance, carrier issues, etc.
- Lead benefit program project management support to keep work on track

Benefit Plan Compliance – Delivers the right guidance from expert partners plus the reassurance of having the right information to put the right compliance plans in place with constant communication to keep you up-to-date and on-track.

- Research and report on key regulatory and legislative actions related to health and welfare plans
- Conduct compliance reviews
- Develop customized timelines for compliance activities
- Provide continuous education programs (seminars, email updates, toolkits, blog)

One HORAN – Lead comprehensive benefit review to include executive benefits, retirement readiness, company & business succession, individual financial planning and wealth management.

HORAN Associates, Inc.

City of Monroe

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

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

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

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

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

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

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

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

**SCHEDULE B**

**COMPENSATION SCHEDULE**

Health Benefits Program Management (medical and prescription drug)

\$20.00 \*\* Per enrolled employee per month

Fees are based on current enrollment of 106 employees, estimated annually at \$25,440. (Fees will vary month to month with enrollment.)

\*\* Fee is subject to change if enrollment shifts more than +/- 10%

Ancillary Benefits Program Management

HORAN will accept standard commission from your administrator or insurer for the following benefits programs.

- Dental
- Vision
- Group life insurance
- Any other lines of coverage, if added in the future

Prices are built in at the carrier level and will be paid by the carrier.

There are no miscellaneous, one-time set-up charges research fees. Any additional work outside the scope of services will be agreed upon up front and billed separately.

HORAN Associates, Inc.

City of Monroe

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

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

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

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

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

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

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

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

## SCHEDULE C

### BUSINESS ASSOCIATE AGREEMENT

**WHEREAS**, pursuant to the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 2024 (Aug. 21, 1996) (“HIPAA”), the Office of the Secretary of the Department of Health and Human Services has issued: (1) regulations providing Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Subparts A and E of Part 164 (“Privacy Rule”); (2) regulations providing Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Subpart C of Part 164 (the “Security Rule”); and (3) regulations modifying the Privacy Rule, Security Rule, Enforcement and Breach Notification Rules; and

**WHEREAS**, the privacy and security provisions of HIPAA have been amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) provisions of the American Recovery and Reinvestment Act of 2009, and any and all references in this Agreement to the “HIPAA Rules” shall be deemed to include the Privacy Rule, the Security Rule, HITECH, the Enforcement and Breach Notification Rules, and all existing and future implementing regulations, as they become effective; and

**WHEREAS**, the HIPAA Rules provide, among other things, that a Covered Entity is permitted to disclose Protected Health Information (“PHI”) to a Business Associate and allow the Business Associate to obtain, receive, and create PHI on the Covered Entity’s behalf, only if the Covered Entity obtains satisfactory assurances in the form of a written contract, that the Business Associate will appropriately safeguard the PHI; and

**WHEREAS**, City of Monroe (the “Plan Sponsor”) maintains one or more Health Plans (“Plans”) and has engaged HORAN Associates, Inc. (“Business Associate”) to perform services, which may be described in a separate contract (the “Services Arrangement”) and Business Associate may receive PHI, or create and receive such information in the performance of services on behalf of such Plans. Plan Sponsor and Business Associate desire to determine the terms under which they shall comply with the HIPAA Rules;

**NOW THEREFORE**, the Plans, Plan Sponsor, and Business Associate agree as follows:

#### 1. GENERAL HIPAA COMPLIANCE PROVISIONS

1.1. **HIPAA Definitions.** Except as otherwise provided in this Agreement, all capitalized terms contained in this Agreement shall have the meanings set forth in the HIPAA Rules.

1.2. **HIPAA Readiness.** Business Associate agrees that it will be fully compliant with the requirements of the HIPAA Rules that apply to Business Associates by the compliance dates established under such rules to the extent necessary to enable the Plans to comply with their obligations under the HIPAA Rules.

1.3. **Changes in Law.** Business Associate agrees that it will comply with any changes in the HIPAA Rules by the compliance date established for any such changes. If, due to such a change, either or all of the parties are no longer required to treat PHI in the manner provided for in this Agreement, the parties shall renegotiate this Agreement, subject to the requirements of Section 5. Any such renegotiation shall occur as soon as practicable following the occurrence of the change.

1.4. **Nature of Relationship.** The parties acknowledge that:

1.4.1. Each Plan is a Group Health Plan and a Covered Entity;

1.4.2. Business Associate is a Business Associate of one of more of the Plans; and

1.4.3. City of Monroe is the Plan Sponsor (as defined in section 3(16)(b) of Employee Retirement Income Security Act of 1974 29 USC § 1001 *et seq.*, as amended (“ERISA”)) of each Plan, is not a Covered Entity, and acts in the capacity of a plan sponsor as defined in the HIPAA Rules.

1.4.4. Whenever reference is made in this Agreement to actions or undertakings of a Plan, to reports or information provided by the Business Associate to a Plan, or to instructions to the Business Associate from a Plan, the reference to the Plan shall be to the person or entity designated in such Plan’s documents as having responsibility for Plan administration or, if no designation is made therein, the Plan Sponsor.

1.4.5. The relationship of the Business Associate to any Plan (or the Plan Sponsor) is solely a contractual relationship and nothing in the Services Arrangement or this Agreement shall be interpreted as creating an agency relationship with the Business Associate under Federal common law.

## 2. TREATMENT OF PHI

### 2.1. Permitted Uses and Disclosures of PHI.

2.1.1. **Uses and Disclosures on Behalf of the Plan.** The Business Associate shall be permitted to use and disclose PHI for the services Business Associate is providing to the Plan or Plan Sponsor pursuant to the Services Arrangement, which may include but not be limited to Treatment, Payment activities and/or Health Care Operations, and as otherwise required to perform its obligations under this Agreement and the Services Arrangement.

2.1.2. **Other Permitted Uses and Disclosures.** In addition to the uses and disclosures set forth in Section 2.1.1, Business Associate may use or disclose PHI received from, or created or received on behalf of, the Plan under the following circumstances:

#### 2.1.2.1. Disclosures to the Plan Sponsor. Business Associate may provide:

i. Summary Health Information to the Plan Sponsor upon Plan Sponsor’s written request which specifies that the purpose of the request is either: (a) to obtain premium bids for providing health insurance coverage to a Plan; and/or (b) to modify, amend or terminate a Plan;

ii. Information to the Plan Sponsor on whether an individual is participating in a Plan or is enrolled or has disenrolled from any insurance coverage offered by the Plan; and

iii. PHI to the Plan Sponsor for purposes of Plan Administration Functions, provided that the Plan Sponsor has provided to Business Associate: (a) a copy of Plan Sponsor’s certification to the applicable Plan under 45 CFR 164.504(f)(2) relating to the required amendment of such Plan’s plan documents (the “Certification”), and (b) a list of employees of or descriptions of positions with Plan Sponsor who are authorized in accordance with the applicable plan documents to receive PHI from the Business Associate in connection with Plan Administration Functions of such Plan.

2.1.2.2. **Use of PHI for Management, Administration, and Legal Responsibilities.** Business Associate is permitted to use PHI if necessary for the proper management and administration of Business Associate or to carry out its legal responsibilities.

2.1.2.3. **Disclosure of PHI For Management, Administration, and Legal Responsibilities.** Business Associate is permitted to disclose PHI if necessary for the proper management and administration of Business Associate, or to carry out its legal responsibilities, provided that the disclosure is required by law, or Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the

purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person will notify Business Associate immediately of any instance of which it is aware in which the confidentiality of the PHI has been breached.

**2.1.2.4. Data Aggregation Services.** Business Associate is permitted to use or disclose PHI to provide data aggregation services, as that term is defined by 45 CFR §164.501, relating to the health care operations of a Plan.

**2.1.2.5. De-identification.** Business Associate is permitted to use PHI to de-identify the information in accordance with 45 CFR §164.514. Once de-identified, the information is no longer PHI or subject to the terms of this Agreement and may be used or disclosed by the Business Associate as long as the information does not include a key or other mechanism that would enable the information to be identified.

**2.1.3. Further Uses Prohibited.** Except as provided in Sections 2.1.1 and Section 2.1.2, Business Associate is prohibited from further using or disclosing any information received from the Plan, or from any other Business Associate of the Plan, for any commercial purposes of Business Associate. Business Associate shall not use or disclose Genetic Information for underwriting purposes in violation of the HIPAA Rules.

**2.2. Minimum Necessary.** Business Associate shall only request, use, and disclose the minimum amount of PHI necessary to accomplish the purposes of the request, use, or disclosure. Business Associate and Plan Sponsor acknowledge that the phrase “minimum necessary” shall be interpreted in accordance with the HIPAA Rules.

**2.3. Prohibited, Unlawful, or Unauthorized Use and Disclosure of PHI.** Business Associate shall not use or further disclose any PHI received from, or created or received on behalf of, a Plan, in a manner that would violate the requirements of the Privacy Rule if done by the Plan.

**2.4. Required Safeguards.** Business Associate will develop, implement, maintain, and use appropriate safeguards to prevent use or disclosure of PHI received from, or created or received on behalf of, a Plan or other than as provided for in this Agreement or as required by law, including adopting policies and procedures regarding the safeguarding of PHI; and providing training to relevant employees on such policies and procedures to prevent the improper use or disclosure of PHI. To the extent Business Associate will carry out one or more of Plan Sponsor’s obligations under the Privacy Rule, the Business Associate will comply with the requirements of the Privacy Rules that apply to the Plan Sponsor in the performance of such obligations.

**2.5. Mitigation of Improper Uses or Disclosures.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

**2.6. Reporting of Unauthorized Uses and Disclosures.** Business Associate shall promptly report in writing to the applicable Plan any use or disclosure of PHI not provided for under this Agreement, of which Business Associate becomes aware.

**2.7. Security Rule.**

**2.7.1. Security Safeguards.** Business Associate agrees to implement administrative, physical, and technical safeguards set forth in the Security Rule that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that Business Associate creates, receives, maintains, or transmits on behalf of any Plan or Plan Sponsor.

**2.7.2. Security Incidents.** Business Associate agrees to report to the Plans and Plan Sponsor any unauthorized access, use, disclosure, modification, or destruction of information or interference

with information system operations which affect Electronic PHI created, received, maintained, or transmitted on behalf of any Plan of which Business Associate becomes aware. Business Associate agrees to also report to the Plan and Plan Sponsor any attempted unauthorized access affecting Electronic PHI created, received, maintained, or transmitted on behalf of any Plan of which Business Associate becomes aware; provided that Business Associate determines that the attempted access was material and credible.

**2.8. Breach Notifications.** Business Associate agrees to notify the applicable Plan and the Plan Sponsor of any Breach of Unsecured PHI within 10 days from the date of discovery.

**2.8.1. Information About Breach.** Business Associate shall provide a report to the Plan within 15 days of discovery of a Breach except when despite all reasonable efforts by Business Associate to obtain the information required, circumstances beyond the control of the Business Associate necessitate additional time. Under such circumstances Business Associate shall provide to the Plan the required information as soon as possible and without unreasonable delay, but in no event later than 30 calendar days from the date of discovery of a Breach. A Breach will be treated as discovered in accordance with 45 CFR §164.410. The Business Associate's report shall include: (i) the date of the Breach; (ii) the date of discovery of the Breach; (iii) a list of each individual whose Unsecured PHI has been or is reasonably believed to have been used, accessed, acquired, or disclosed during the Breach; (iv) a description of the type of Unsecured PHI involved; (v) the identity of who made the non-permitted use or disclosure and who received the non-permitted disclosure (if known); and (vi) any other details necessary to complete an assessment of whether the PHI has been compromised.

**2.8.2. Notification to Individual and Others.** Unless otherwise agreed between the Plan Sponsor and Business Associate, the Plan shall be responsible to provide notification to individuals whose Unsecured PHI has been disclosed, as well as the Secretary of Health and Human Services and the media, as required by the HIPAA Rules.

**2.8.3. Investigation and New Procedures.** Business Associate agrees to investigate the Breach and to establish procedures to mitigate losses and protect against future Breaches, and to provide a description of these procedures and the specific findings of the investigation to the Plan in the time and manner reasonably requested by the Plan.

**2.9. Plan Participant Requests.** The Plans, Plan Sponsor and Business Associate acknowledge that Plan participants have certain rights under the Privacy Rule to access, amend and receive an accounting of certain disclosures of their PHI. Business Associate further understands that the Plans have developed specific policies and procedures to be followed for Plan participants who make such requests as an exercise of their rights under the Privacy Rule. A request by a Plan participant or such participant's personal representative made in accordance with such policies and procedures to access, amend or receive an accounting of disclosures of the participant's PHI is referred to herein as a "Formal HIPAA Request."

**2.9.1. Access to PHI.** Within 30 days of a Plan's request on behalf of an individual, Business Associate agrees to make available to the Plan any relevant PHI in a Designated Record Set received from, or created or received on behalf of the Plan in accordance with the Privacy Rule. If Business Associate receives, directly or indirectly, a request from an individual requesting PHI, Business Associate shall notify the Plan in writing promptly of such request no later than 10 business days of receiving such request. If a Plan requests an electronic copy of PHI that is maintained electronically in a Designated Record Set in the Business Associate's custody or control, Business Associate will provide an electronic copy in the form and format specified by the Plan if it is readily producible in such format; if it is not readily producible in such format, Business Associate will work with the Plan to determine an alternative form and format that enables the Plan to meet its electronic access obligations under 45 CFR §164.524.

**2.9.2. Amendment of PHI.** Within 30 days of a Plan's request, Business Associate agrees to make available to the Plan any relevant PHI in a Designated Record Set received from, or created or

received on behalf of, the Plan so the Plan may fulfill its obligations to amend such PHI pursuant to the Privacy Rule. Business Associate shall incorporate any amendments to PHI into any and all PHI Business Associate maintains. If Business Associate receives, directly or indirectly, a request from an individual for an amendment to PHI, Business Associate shall notify the Plan in writing promptly of such request no later than 10 business days of receiving such request. Each Plan shall have full discretion to determine whether the requested amendment shall occur.

2.9.3. **Accounting of Disclosures.** Business Associate shall maintain, beginning as of the date Business Associate first receives PHI from a Plan or the Plan Sponsor, an accounting of those disclosures of PHI it receives from, or creates or receives on behalf of the Plans which are not excepted from disclosure accounting under the Privacy Rule. Within 30 days of a Plan's request, Business Associate shall make available to such Plan, the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528. If Business Associate receives, directly or indirectly, a request from an individual requesting an accounting of disclosures of PHI, Business Associate shall notify the applicable Plan in writing promptly of such request no later than 10 business days of receiving such a request. Business Associate shall provide such an accounting based on an individual's Formal HIPAA Request to the Plan and the Plan shall have full discretion to determine whether the requested accounting shall be provided to the requesting individual. Business Associate will maintain the disclosure information for at least 6 years following the date of the accountable disclosure to which the disclosure information relates.

2.10. **Restrictions and Confidential Communications.** Business Associate shall, upon notice from a Plan in accordance with Section 3.3, accommodate any restriction to the use or disclosure of PHI and any request for confidential communications to which such Plan has agreed in accordance with the Privacy Rule.

2.11. **Subcontractors.** Business Associate will require each of its agents, including any subcontractor (if permitted under the applicable Services Arrangement), to whom it provides PHI received from, or created or received on behalf of, a Plan to agree, in a written agreement with Business Associate, to comply with the Security Rule, and to agree to all of the same restrictions and conditions contained in this Agreement or the HIPAA Rules that apply to Business Associate with respect to such information.

2.12. **Audit.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received on behalf of, the Plans available to the Secretary of Health and Human Services upon request for purposes of determining compliance by the Plans with the HIPAA Rules.

2.13. **Enforcement.** Business Associate acknowledges that it is subject to civil and criminal enforcement for failure to comply with the HIPAA Rules.

### **3. OBLIGATIONS OF COVERED ENTITY**

3.1. **Notice of Privacy Practices.** The Plans shall notify Business Associate of any limitations in its notice of privacy practices, to the extent such limitations may affect the Business Associate's use or disclosure of PHI in accordance with 45 CFR 164.520, as well as any changes to such notice.

3.2. **Revocation of Permission.** Each Plan shall provide Business Associate with any changes in, or revocation of, permission by any individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures with respect to such Plan.

3.3. **Notice of Restrictions and Confidential Communications.** Each Plan shall notify Business Associate of any restriction on the use or disclosure of PHI that such Plan has agreed to in accordance with 45 CFR § 164.522. The applicable Plan shall notify Business Associate of any restriction on the use or

disclosure of PHI and any request for confidential communications to which, in accordance with the Privacy Rule, such Plan has agreed.

3.4. **Permissible Requests By the Plan.** Except as provided in Section 2.1, the Plans shall not request that Business Associate use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity.

#### 4. AMENDMENT AND TERMINATION

4.1. **Term and Termination.** The Term of this Agreement shall be effective as of the date this Agreement is signed, and shall terminate when all of the PHI provided by the Plan to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with Section 4.3.

4.2. **Termination for Violation of Agreement.** Without limiting the rights of the parties under the Services Arrangement, the applicable Plan(s) will have the right to terminate this Agreement and the Services Arrangement if Business Associate has engaged in an activity or practice that constitutes a material breach or violation of Business Associate's obligations regarding PHI under this Agreement and, on notice of such material breach or violation from such Plan(s) or Plan Sponsor, fails to take reasonable and diligent steps to cure the breach or end the violation. The applicable Plan(s) will follow the notice of termination procedures (if any) applicable to the Services Arrangement. Notwithstanding the termination of this Agreement, Business Associate shall continue to comply with Section 4.3 hereof after termination of this Agreement.

4.3. **Return of PHI.** At termination of this Agreement or the Services Arrangement, whichever shall be first to occur, Business Associate shall return to the Plans all PHI received from, or created or received on behalf of, such Plans that Business Associate maintains in any form and shall retain no copies of such information. This provision shall also apply to PHI that is in the possession of any Subcontractor of Business Associate. Further, Business Associate shall require any such Subcontractor to certify to Business Associate that it has returned or destroyed all such information. If such return is not feasible, Business Associate shall notify the applicable Plan(s) thereof and Business Associate shall destroy such PHI and/or extend the protections of this Agreement to such PHI retained by Business Associate and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

#### 5. MISCELLANEOUS PROVISIONS

5.1. **Third-Party Beneficiary.** No individual or entity is intended to be a third-party beneficiary to this Agreement.

5.2. **Severability.** If any provisions of this Agreement shall be held by a court of competent jurisdiction to be no longer required by the HIPAA Rules, the parties shall exercise their best efforts to determine whether such provision shall be retained, replaced, or modified.

5.3. **Procedures.** The parties shall comply with procedures mutually agreed upon by the parties to facilitate the Plans' compliance with the HIPAA Rules, including procedures for employee sanctions and procedures designed to mitigate the harmful effects of any improper use or disclosure of the PHI of any Plans.

5.4. **Choice of Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the state of Ohio, except to the extent federal law applies.

5.5. **Headings.** The headings and subheadings of the Agreement have been inserted for convenience of reference only and shall not affect the construction of the provisions of the Agreement.

5.6. **Cooperation.** The parties shall agree to cooperate and to comply with procedures mutually agreed upon to facilitate compliance by the Plans with the HIPAA Rules, including procedures designed to mitigate the harmful effects of any improper use or disclosure of the Plans' PHI.

5.7. **Notice.** All notices, requests, demands, approvals, and other communications required or permitted by this Agreement shall be in writing and sent by certified mail or by personal delivery. Such notice shall be deemed given on any date of delivery by the United States Postal Service. Any notice shall be sent to the following address (or such subsequent address provided by the applicable party):

5.7.1. If to a Plan or the Plan Sponsor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5.7.2. If to Business Associate:

HORAN Associates, Inc.  
Privacy Officer  
4990 E Galbraith Rd  
Cincinnati OH 45236

5.8. **Conflict.** In the event of any conflict between the provisions of the Services Arrangement and this Agreement, the terms of this Agreement shall govern to the extent necessary to assure the Plans' compliance with the HIPAA Rules.

IN WITNESS WHEREOF, the undersigned, having full authority to bind their respective principals, have executed this Agreement as of this 5th day of July, 2017.

City of Monroe

City of Monroe

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

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

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

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

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

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

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

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

HORAN Associates, Inc.

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

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

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

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