BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered into by and between _Town of Apex, NC ("Covered Entity" or "Plan"), and Alliant Insurance Services, Inc., a California corporation ("Business Associate"), as of the date last written below. Each Covered Entity and Business Associate are sometimes referred to herein singularly as "Party" and collectively as "Parties."

Pursuant to the Parties' separate services agreement ("Services Agreement") or Plan Sponsor's designation of Business Associate as the Broker of Record (BOR) for certain group health plan benefits offered under the Plan, as applicable, Business Associate has agreed to perform certain services for or on behalf of the Covered Entity that may involve the creation, maintenance, use, transmission or disclosure of protected health information within the meaning of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and its implementing regulations, 45 CFR Parts 160 and 164 ("HIPAA Rules") ("Covered Services").

To the extent the Parties have entered into a written Services Agreement, this Agreement supplements the Services Agreement and all other concurrent and future agreements between the Parties that may involve protected health information and compliance with HIPAA. The Agreement is intended to and shall be interpreted to satisfy the requirements for business associate agreements as set forth in the HIPAA Rules as they have been amended, including but not limited to privacy and security amendments of the Affordable Care Act and the Health and Human Services ("HHS") Omnibus Final Rule.

Business Associate understands and acknowledges that it is subject to the HIPAA Rules, and that violation of the HIPAA Rules carries significant penalties as described in 45 CFR § 160.404. Business Associate also understands that it is subject to and must comply with the Health Information Technology for Economic and Clinical Health Act ("HITECH") privacy provisions of the American Recovery and Reinvestment Act, as well as with any applicable state privacy laws.

WHEREFORE, for valuable consideration, including the mutual promises and benefits as set forth below, the Parties agree as follows:

DEFINITIONS

I. **General Definitions**. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

II. **Specific Definitions.**

(A) ***Business Associate*** shall generally have the same meaning as the term "business associate" at 45 CFR § 160.103, and in reference to the Party to this Agreement, shall mean Business Associate.

(B) ***Covered Entity*** shall generally have the same meaning as the term "covered entity" at 45 CFR § 160.103, and in reference to the Party to this Agreement, shall mean Covered Entity.

(C) ***Protected Health Information ("PHI")*** shall generally have the same meaning as the term "protected health information" at 45 CFR § 160.103, and shall include any individually identifiable information that is created, received, maintained, or transmitted by Business

Associate on behalf of Covered Entity that relates to an Individual's past, present, or future physical or mental health, health care, or payment for health care, whether such information is in oral, hard copy, electronic, or any other form or medium.

AGREEMENT

I. **Recitals Incorporated.** The recitals above are expressly incorporated into the terms of this Agreement.

II. **Relationship of the Parties.** Business Associate is, and at all times during this Agreement shall, be acting as an independent contractor to the Covered Entity, and not as the Covered Entity's agent. Covered Entity shall not have authority to control the method or manner in which Business Associate performs its services on behalf of Covered Entity, provided that Business Associate complies with the terms of this Agreement and the HIPAA Rules. Business Associate shall not have authority to bind Covered Entity to any liability unless expressly authorized by Covered Entity in writing, and Covered Entity shall not be liable for the acts or omissions of Business Associate. Business Associate shall not represent itself as the agent of Covered Entity. Nothing in this Agreement shall be deemed to establish an agency, partnership, joint venture or other relationship except that of independently contracting entities.

III. **Business Associate Responsibilities.** Business Associate agrees to:

(A) Fully comply with the HIPAA Rules as they apply to business associates.

(B) Not use or disclose PHI except as permitted by this Agreement or as otherwise required by law.

(C) Use appropriate safeguards to prevent the use or disclosure of PHI other than as permitted by this Agreement. Business Associate shall comply with the requirements in 45 CFR Part 164, Subpart C applicable to business associates, including the use of administrative, physical and technical safeguards to protect electronic PHI. Such safeguards will include, but not be limited to, Business Associate conducting periodic risk assessments with respect to Covered Entity's PHI. Business Associate shall, to the extent reasonably possible, implement and follow recognized security practices consistent with H.R. 7898, enacted into law on January 5, 2021. Business Associate shall provide Covered Entity with all information reasonably requested about such safeguards, including whether Business Associate follows such recognized security practices and, if so, which practice or practices.

(D) Within thirty (30) days after discovery, report to Covered Entity any use or disclosure of PHI not permitted by this Agreement, applicable state privacy laws, or the HIPAA Rules of which Business Associate becomes aware, including but not limited to reporting breaches of unsecured PHI as required by 45 CFR § 164.410, reporting security incidents as required by 45 CFR § 164.314(a)(2)(i)(C), and reporting breaches and security incidents of Business Associate's contractors and subcontractors.

(E) Fully cooperate with Covered Entity's efforts to promptly investigate, mitigate, and notify third parties of breaches of unsecured PHI or security incidents as required by the HIPAA Rules.

(F) Ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same or equivalent restrictions, conditions, and requirements set forth in this Agreement, applicable state privacy laws, HITECH, and the HIPAA Rules applicable to such subcontractors. Without limitation, Business Associate shall ensure that any subcontractors comply with the applicable requirements of 45 C.F.R. Parts 160, 162, and 164. Business Associate shall fulfill this requirement by executing a written agreement with any subcontractors in compliance with the requirements of the HIPAA Rules. To the extent required by applicable law or other binding regulatory guidance, Business Associate shall not disclose PHI to a "tracking technology vendor" (as defined in guidance issued by the DHHS) unless: (i) Business Associate has entered into

an agreement with such tracking technology vendor in accordance with this Section; and (ii) such disclosure is permitted or required under the Privacy Rule and this Agreement.

(G) Substance Use Disorder Information. The parties acknowledge and agree that records subject to 42 C.F.R. Part 2 ("Part 2") may be used and disclosed only as permitted under Part 2.

(H) Within fifteen (15) days following Covered Entity's request, make available to Covered Entity any PHI in Business Associate's control as necessary to enable Covered Entity to satisfy its obligations to provide an Individual with access to PHI under 45 CFR § 164.524.

(I) Within fifteen (15) days following Covered Entity's request, make available to Covered Entity any PHI for amendment and incorporate any amendments to PHI as necessary to enable Covered Entity to satisfy its obligations under 45 CFR § 164.526.

(J) Maintain information concerning Business Associate's or subcontractors' disclosures of PHI as required by 45 CFR § 164.528(a)-(b) and, within fifteen (15) days following Covered Entity's request, make such information available to Covered Entity as necessary to enable Covered Entity to render an accounting of disclosures pursuant to 45 CFR § 164.528.

(K) To the extent Business Associate is to carry out Covered Entity's obligations under 45 CFR Part 164, Subpart E, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.

(L) Make Business Associate's internal practices, books, and records relating to the use and disclosure of Protected Heath Information received from, or created or received by, Business Associate on behalf of Covered Entity, available to the Secretary for purposes of determining Covered Entity's compliance with the HIPAA Rules.

IV. Uses and Disclosures by Business Associate.

(A) **Permissible Uses and Disclosures.** Business Associate may use or disclose PHI only as follows:

(1) As necessary to perform the services set forth in the Services Agreement.

(2) To de-identify PHI in accordance with 45 CFR § 164.514(a)-(c).

(3) As required by law.

(4) For the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that any disclosures for these purposes (a) are required by law, or (b)(i) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and (b)(ii) the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(5) To provide data aggregation services relating to the health care operations of Covered Entity as defined in 45 CFR § 164.501.

(B) **Impermissible Uses or Disclosures.** Business Associate may not use or disclose PHI in a manner that would violate 45 CFR Part 164, Subpart E, if done by Covered Entity except for the specific uses and disclosures set forth in Sections IV(A)(1)-(5), if applicable.

(C) **Minimum Necessary.** Business Associate agrees to use or disclose the minimum amount of PHI necessary for a permitted purpose pursuant to this Section IV, Covered Entity's policies and procedures, and 45 CFR § 164.502(b).

V. Obligations and Duties of Covered Entity.

(A) Notice of Privacy Practices. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation(s), if any, may affect Business Associate's use or disclosure of PHI. Covered Entity may satisfy this requirement by providing Business Associate with the notice of privacy practices that it delivers in accordance with 45 C.F.R. § 164.520, as well as any changes to such notice.

(B) Notice of Individual Permission. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

(C) Notice of Other Restrictions. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(D) Impermissible Requests. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by Covered Entity.

VI. Term and Termination. Unless otherwise agreed in writing by the Parties, this Agreement shall be effective as of the date executed by the Parties and shall continue until terminated as provided below.

(A) Termination. This Agreement shall terminate on the date the Services Agreement or BOR, as applicable, is terminated for any reason. In addition, this Agreement may be terminated earlier as follows:

(1) Covered Entity may terminate this Agreement without cause upon sixty (60) days' prior written notice to Business Associate.

(2) Covered Entity may terminate this Agreement upon thirty (30) days' prior notice if Covered Entity determines that Business Associate or any subcontractor has violated the HIPAA Rules, a material term of this Agreement, or otherwise engaged in conduct that may compromise the PHI. Subject to Section VI(A)(3), Business Associate shall have the opportunity to cure the breach or violation within the 30-day notice period. If Business Associate fails to cure the breach or violation within the 30-day notice period, Covered Entity may immediately terminate this Agreement.

(3) Notwithstanding Section VI(A)(2), Covered Entity may terminate this Agreement immediately if Business Associate or any subcontractor engages in any conduct that Covered Entity reasonably believes may result in adverse action against Covered Entity by any governmental agency or third party.

(B) Termination of Services Agreement. Notwithstanding anything in the Services Agreement to the contrary, Covered Entity shall have the right to terminate the Services Agreement immediately if Business Associate's creation, maintenance, use, transmission or disclosure of PHI is a material purpose of the Services Agreement and this Agreement is terminated for any reason.

(C) Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, Business Associate shall with respect to PHI received from Covered Entity, or created, maintained, used, or received by Business Associate on behalf of Covered Entity:

(1) If feasible, return all PHI to Covered Entity or, if Covered Entity agrees, destroy such PHI.

(2) If the return or destruction of PHI is not feasible, continue to extend the protections of this Agreement and the HIPAA Rules to such information, and not use or further disclose the information in a manner that is not permitted by this Agreement or the HIPAA Rules, and Business Associate will notify the Covered Entity of the retained information in writing. The notification shall include: (a) a statement that the Business Associate has determined that it is infeasible to return or destroy the PHI in its possession; and (b) the specific reasons for such determination. Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to the Business Associate's use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. If it is infeasible for the Business Associate to obtain from employees, contractors, subcontractors, or agents any PHI in their possession, the Business Associate must provide a written explanation to Covered Entity and require the employees, contractors, subcontractors, or agents to agree to extend any and all protections, limitations, and restrictions contained in this Agreement to their use and/or disclosure of any PHI retained after the termination of the Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

(D) Survival. Business Associate's obligations under Section VI shall survive termination of this Agreement.

VII. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

VIII. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time to comply with the requirements of the HIPAA Rules and any other applicable laws.

IX. Governing Law. This Agreement shall be construed to comply with the requirements of the HIPAA Rules, and any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules. All other aspects of this Agreement shall be governed under the laws of North Carolina and all actions shall be venued in the state or district courts of North Carolina**.**

X. Assignment/Subcontracting. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors, and assigns. Business Associate may assign or subcontract rights or obligations under this Agreement to subcontractors or third parties without the express written consent of Covered Entity provided that Business Associate complies with Section III(F), above. Covered Entity may assign its rights and obligations under this Agreement to any successor or affiliated entity.

XI. Cooperation. The Parties agree to cooperate with each other's efforts to comply with the requirements of the HIPAA Rules and other applicable laws; to assist each other in responding to and mitigating the effects of any breach of PHI in violation of the HIPAA Rules or this Agreement; and to assist the other Party in responding to any investigation, complaint, or action by any government agency or third party relating to the performance of this Agreement. In addition to any other cooperation reasonably requested by Covered Entity, Business Associate shall make its officers, members, employees, and agents available without charge for interview or testimony.

XII. Notice. All notices, requests, and other communications given under this BAA, shall be in writing and deemed duly given: (A) when delivered personally to the recipient; (B) one (1) business day after being sent to the recipient by reputable overnight courier service (charges prepaid); or (C) five (5) business days after being sent by U.S. certified mail (charges prepaid). Except as otherwise provided herein, all notices requests or communications under this BAA shall be addressed as follows:

If to Covered Entity:

73 Hunter Street

Apex, NC 27502

If to Business Associate:

227 W. Trade St

Suite 1930

Charlotte, NC 28202

With a copy to:
Legal Department (EB)
701 B Street, 6th Floor
San Diego, CA 92101
ContractsAdministration@alliant.com

XIII. Relation to Services Agreement. This Agreement supplements the Services Agreement, as applicable. The terms and conditions of the Services Agreement shall continue to apply to the extent not inconsistent with this Agreement. If there is a conflict between this Agreement and the Services Agreement as it relates to the creation, maintenance, use, transmission or disclosure of PHI, this Agreement shall control.

XIV. No Third Party Beneficiaries. Nothing in this Agreement is intended to nor shall it confer any rights on any other persons except Covered Entity and Business Associate and their respective successors and assigns.

XV. Insurance. Unless waived in writing by Covered Entity, Business Associate shall obtain and maintain insurance or equivalent programs of self-insurance with appropriate limits sufficient to cover costs, losses and damages that may arise from Business Associate's breach of this Agreement or any unauthorized use or disclosure of PHI by Business Associate. Upon Covered Entity's request, Business Associate shall provide proof of such insurance to Covered Entity.

XVI. Entire Agreement. This Agreement contains the entire agreement between the Parties as it relates to the use or disclosure of PHI, and supersedes all prior discussions, negotiations and services relating to the same to the extent such other prior communications are inconsistent with this Agreement.

COVERED ENTITY	BUSINESS ASSOCIATE
By_____	By_____
Print:_____	Print:_____
Title:_____	Title:_____
Date:_____	Date:_____