



**City of Sheboygan
Section 125 - Flexible Benefit Plan
Agreement for Service**

01/01/2024 - 12/31/2024

This Agreement for Third Party Administration Services ("Agreement") is made and entered into between Diversified Benefit Services, Inc. hereinafter referred to as "DBS" and the Employer designated on page (4) hereinafter referred to as "Employer".

WHEREAS, Employer has engaged DBS as a Third Party Administrator ("TPA") to provide Section 125 – Flexible Benefit Plan – FSA ("Plan") services ("Services") for the Plan sponsored by the Employer;

WHEREAS, DBS is making available FSA administrative and other related services to be established by the Employer and designed to comply with Section 125 of the Internal Revenue Code (the "Code");

WHEREAS, the FSA administrative services incorporates professional material, and internally developed DBS corporate information;

NOW THEREFORE, in consideration of the mutual promises and agreements contained herein the parties hereto agree as follows:

1. DBS agrees to make available the Flexible Benefit Plan to be used as the Employer Flexible Benefit Plan. Employer agrees not to disclose details of the Plan to other parties or copy any materials provided, except for auditors, attorneys, and others to whom disclosure is legally required, unless DBS gives permission to do so.
2. Employer retains DBS as Plan Agent for the Employer Flexible Benefit Plan and authorizes DBS to perform all functions necessary to prepare, implement, and operate the Employer Flexible Benefit Plan.
3. Employer agrees to provide data that DBS needs in communication and enrollment of the Flexible Benefit Plan. Employer also agrees to make the necessary payroll deductions and assist DBS in implementing and operating the Plan.
4. Employer recognizes that certain owners and their family members may not be eligible to participate in the Flexible Benefit Plan (including the pre-tax premium portion of the Plan). The Employer agrees to contact their legal counsel as needed to determine whether their owners and family members can participate. The Employer further agrees not to provide DBS with enrollment information on the owners and family members if it is determined said persons are ineligible to participate.
5. DBS services may include some or all of the following items (as needed): restatement of a Flexible Benefit Plan Document, Summary Plan Description, ancillary forms, employee enrollment, and claims recordkeeping. In addition, annual non-discrimination testing required under Code Section 125 may be completed only if the Employer agrees to provide all Plan contribution information to DBS, including any group insurance premium contributions and key / highly compensated employee information (including salaries). Only dependent care testing can be completed if the Employer elects not to provide group insurance premium contribution amounts to DBS. The testing will be completed only if the Employer provides timely and complete information. Other package services specified in the attached Schedule A may be provided as noted by the Employer.
6. If the Employer elects to have the employee pay the monthly ongoing administration fee and an employee terminates with a balance in an account, the Employer shall be responsible for the monthly fee from that point forward. In addition, Employer recognizes that the Plan allows employees to submit claims after Plan year end for a specified period in accordance with the Plan Document.
7. Employer agrees to pay fees for services on a timely basis to DBS as listed in the attached Schedule A which is made part of this Agreement. Terms are included on each invoice as due upon receipt. In the event that the Employer does not remit payment for an undisputed invoice within a reasonable period of time (30 days), DBS reserves the right to cease providing Services to the Employer until such time that any outstanding invoices are paid. In the event that a payment is over 30 days past due, the Employer authorizes DBS to satisfy the amounts owed via ACH/EFT transfer from the bank account normally designated for payment of claims under the Plan.



8. Any overpayments to employees as a result of the Employer not notifying DBS as to status changes via the DBS Status Change Notification Form or other agreed upon format by both parties as of the claim cut-off date, will be the responsibility of the Employer. DBS shall have two complete business days to respond to the Employers request on a termination change, status change or other election change. Any subsequent bank charges as a result of the aforementioned will be the responsibility of the Employer. Requests by the Employer for processing special checks (meaning checks not processed at the regular claims processing date) due to an employee filing late claim(s), (meaning claim(s) received by DBS after the claims deadline date), or for lost or stolen checks will be done for a fee of \$35 per check. If an employee or former employee fails to retain original documentation regarding claims submitted to DBS and the employee or former employee requests copies of claims and/or documentation from DBS because of an audit by the IRS or another agency, there will be a fee of \$0.25 per copy made. This will only be authorized by the Employer and will be billed to the Employer if authorization is obtained.
9. With respect to inadvertent overpayments to participants, DBS shall make reasonable efforts to recoup such payments, including offsets to future payments, ACH withdrawals (in the case of direct deposit participants) and a written request to return such overpayments, provided that DBS is notified within sixty days of such overpayments. However, DBS will not be responsible for funding any legal action to recover such overpayments, nor will it be responsible for reimbursing such overpayments to the Employer.
10. Employer agrees to pay to DBS the agreed upon fee indicated for other services listed on attached Schedule. This agreement does not cover any possible future Government imposed costs regarding auditing of Flexible Benefit Plans. Also, it is not within the scope of this Agreement to cover possible future Government imposed costs with regard to filing fees for any Government forms, documents, or year end (5500) reports. The term "Government" shall include but not be limited to the United States Government, Internal Revenue Service, Department of Labor, or a State within the United States.
11. This Agreement shall be exclusive and remain in effect for a period of one full Plan year wherein both parties have signed and dated said Agreement ("Initial Term"), after which time it shall be renewed automatically for one Plan year period ("Renewal Terms"), unless one party notifies the other in writing at least sixty (60) days prior to the renewal date that it does not intend to renew. The renewal date shall be the end of the Plan year. Notification under Section 11 of this Agreement shall be deemed duly given if delivered by certified or registered mail with postage prepaid to DBS or the Employer.
12. Notwithstanding the preceding paragraphs, either party may terminate this Agreement for cause at any time. "Cause" shall be limited to any of the following reasons: (a) if either party fails to perform its duties hereunder and such failure is not cured within thirty days of receipt of written notice thereof; (b) if all or any portion of the Plan fails to comply with applicable provisions of the Code and regulations thereunder or state regulations; or (c) if some or all of the Plan is not legally or validly implemented.
13. If the Employer terminates the Agreement without cause during the Agreement period ("Initial Term or Renewal Term"), the Employer shall owe liquidated damages to DBS in the amount of \$1,500. These damages shall be due as of the date that the Employer terminates the Agreement. If the liquidated damages are not paid within 30 days of the termination, DBS will not process claims and/or reports until full payment is made by the Employer.
14. If the Employer is purchased by another organization and/or merges and/or affiliates with another organization, the terms of this Agreement shall remain in full force and shall be binding until the end of the term of the Agreement unless a buyout of the Agreement is agreed to. Any buyout of the Agreement shall be the fees that would have been charged for the remainder of the Agreement period. Such fees shall be based upon the attached Schedule A of the Agreement including enrollment, monthly administration, miscellaneous, and any package fees that may apply.
15. DBS shall have the right to retain, at its own cost, outside services in preparing, implementing and operating of the Plan.
16. Nothing contained herein shall obligate Employer to utilize DBS as its agent or broker in providing group benefits to employees.

17. Employer recognizes that the Plan Document is an important legal document and that it has been prepared based on the understanding of DBS of the desired provisions. To ensure that the Plan Document conforms to the Employer's situation the Employer should consult with its attorney on the legal and tax implications of the Plan. Employer recognizes that DBS is not a law firm and that DBS employees are not attorneys. Additionally, Employer recognizes that DBS is not an accounting (CPA) firm.
18. Employer recognizes that DBS may maintain paper and/or electronic records related to member/participant claims for a period of seven years, after which time the records will be destroyed.
19. Employer agrees to indemnify and hold harmless DBS, its affiliates, and any of its directors, officers or employees with respect to any and all liabilities, losses, damages, or expenses, including reasonable attorneys' fees, related to third party claims incurred by reason of the failure of the Employer to carry out its obligation under this agreement on a timely and non-negligent basis, unless such failure is based upon the negligence of DBS or any of its employees.
20. DBS agrees to indemnify and hold harmless Employer, its affiliates, and any of its directors, officers or employees with respect to any and all liabilities, losses, damages, or expenses, including reasonable attorneys' fees, related to third party claims incurred by reason of the failure of DBS to carry out its obligation under this agreement on a timely and non-negligent basis, unless such failure is based upon the negligence of Employer or any of its employees.
21. This exclusive Agreement, including Schedule A, constitutes the entire understanding of the parties and may be modified only in writing executed by both parties. It shall be binding upon both parties and their successors or assigns and shall be interpreted under the laws of the State of Wisconsin.
22. Plan years covered by the "Initial Term" of this Agreement shall be 01/01/2024 - 12/31/2024.
23. The respective rights and obligations of the parties under Sections 7, 18, 19, 20, 21, and 24 shall survive the termination of this Agreement.
24. If any provision of this Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision, and this Agreement shall be construed and enforced as if such provision had not been included.
25. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument. Any signature delivered by a party by facsimile transmission shall be deemed to be an original signature thereto.
26. All notices, demands, and requests that a party is required or elects to give to any other party shall be in writing and any such notice shall become effective (a) upon personal delivery thereof, including, but not limited to, delivery by a recognized overnight mail or courier service, or (b) three (3) days after it shall have been mailed by United States mail, first class, certified or registered, with postage prepaid, in each case addressed to the party to be notified as set forth in the agreement or to such other address as each party may designate for itself by like notice.
27. Notices to DBS will be sent to:

Diversified Benefit Services, Inc.
P.O. Box 260
Hartland, WI 53029



Dated this _____ day of _____, 20_____.

City of Sheboygan - "Employer"

By: _____ Title: _____

Employer Address, City, State, Zip / (Notices will be sent to the above address)

Diversified Benefit Services, Inc. - "DBS"

By: _____ Title: President

Witness: Anne M. Sindberg Title: Client Services Specialist



City of Sheboygan Schedule A

1. Plan Implementation

Plan Design, Plan Document, Summary Plan Description, Business Associate Agreement, Privacy Practices provided as is. Client generated benefit or Plan changes that require the updating, changing, amending or restating of the Plan Document or Summary Plan Description will be billed separately.

Fee: **Included**

2. Group Meetings

Flexible Benefit Plan group meeting materials provided to the employer for distribution to employees. Group presentation(s) or webinars include communication of the Flexible Benefit Plan and explanation of enrollment materials and how to file a claim for reimbursement.

Fee: Included (*Travel/lodging/meals billed separately if applicable*)

3. Employee Enrollment Options & Related Services (Employer May Choose the Type of Enrollment)

- A. **Individual Employee Meetings.** Option A (1) – Comprehensive Individual Employee Meetings: Services will include individual employee enrollment sessions with DBS Benefit Enrollers with a review of the employee flexible benefit Plan worksheet/employee guide and the utilization of the prior plan year. The DBS notebook computer system may be utilized if appropriate. Also includes the completion of enrollment forms and providing employees with an expense reimbursement kit. DBS will provide the Employer with copies of completed enrollment forms if requested. Also includes establishing Plan records on the DBS flexible benefit Plan software administration system, preliminary Plan compliance, election auditing, and other related in-house Plan year setup services. Option A (2) – DBS Enrollers onsite to answer employee questions: DBS Benefit Enrollers will be available for a limited period of time to answer employee questions regarding the plan. Enroller related costs such as travel, lodging, meals may be billed separately if applicable.
- B. **Employer Self-Enrollment.** DBS will provide the Employer with enrollment forms, employee guides, and additional Plan materials for distribution to all eligible employees. An enrollment letter and Plan fact sheet will be provided as well. DBS will supply the Employer with claim forms and/or expense reporting kits as needed. This section also includes establishing Plan records on the Flexible Benefit Plan software administration system, preliminary Plan compliance, election auditing, and other related in-house Plan services. Another option allows for DBS to provide an electronic file of the enrollment materials for Employer to distribute to eligible employees. A third option allows for the employer to send an eligibility/enrollment file electronically to DBS to allow enrollment information to be downloaded into the DBS administration system.
- C. **Online Internet Enrollment.** DBS will provide the Employer with an enrollment instruction letter and Plan information letter that includes a system password for User name and PIN. This will allow employees access to the DBS Website and Online enrollment system. Employees will receive screen confirmation when submitting their election information with print capability. The Employer agrees to distribute the enrollment letter with instructions to all eligible employees. DBS will provide the Employer with copies of completed online enrollment forms if requested. This section also includes establishing Plan records on the Flexible Benefit Plan software administration system, preliminary Plan compliance, election auditing, and other related in-house Plan year setup services.

Option A Fee: (1) Comprehensive individual employee meetings with DBS enroller(s): \$10.00/eligible employee/plan year
(Minimum fee: \$150)

(2) DBS Enrollers onsite to answer employee questions: \$300/enroller/day
(Minimum fee: \$150)

Option B Fee: Self-Enrollment using paper packets or electronic file of materials or eligibility file sent by Employer to DBS: \$3.50/FSA participant/year
(Minimum fee: \$115 /
Maximum fee: \$500)

Option C Fee: Online Internet Enrollment: \$3.50/FSA participant/year
(Minimum fee: \$115 /
Maximum fee: \$500)



DBSbenefits.com

City of Sheboygan Schedule A (continued)

4. Record-keeping, Claims processing, and Plan Reporting

- Process claims from Plan participants and issue reimbursements
- A.S.A.P.® Online Account Viewing (Advanced Strategic Administrative Program) package for administrative users.
- Provide employer aggregate Plan reporting for online viewing and printing
- Prepare employee statements as needed
- Process all family status changes including new hires and terminations
- Reissue lost or stolen reimbursement checks
- Provide 800 toll free telephone number for out of area participants
- Provide periodic informational notices as needed

Plan Year

01/01/2024 – 12/31/2024

Monthly Fee Schedule – (FSA Service Only)

\$4.55/participant/month for service agreement year one

The above monthly fee includes the following categories: Dependent Care Reimbursement Account, Medical Expense Reimbursement Account and/or the Independent Premium Feature. Employer reports including transaction ledger summary, payments in excess of deposits, account deposit summary, and check register are included in the online service package for the Employer.

Minimum Monthly Group Administration Fee: \$100.00

Miscellaneous Fees

- I. Postage/UPS Reimbursement: Statements/checks/direct deposit notices mailed directly to Plan participants and packages sent via UPS directly to the client.
Fee: ***First class postage and/or UPS shipping fees***
- II. Customized materials requested by the client: ***To be quoted***

Optional Services

- I. ACH/EFT service includes account setup with client bank, direct deposit of FSA reimbursements, and transfer of claim payments via ACH from the Employer designated account to the DBS Master 125-FSA account and the mailing of checks and/or direct deposit notices directly to Plan participants.
Fee: ***First Class postage reimbursement***
- II. Annual 5500 & SAR Preparation: Includes data gathering, 5500 & SAR form preparation, answers to questions regarding the form, related W2 questions.
Fee: ***\$375/year (if required for employer)***
- III. Pre-paid stored value card service (debit cards) includes bank account and system set-up, preparation, and administration for the medical reimbursement FSA account. Employer pre-funding of the debit card bank account and additional bank fees due to insufficient funds in the Employer bank account are the responsibility of the Employer. Fees for lost or stolen cards are the responsibility of the Employer or Employee.
Fee: ***Included***
Replacement Card Fee: \$5.00

BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT is entered into on this _____ day of _____, 20___, between City of Sheboygan Section 125 Flexible Benefit Plan (the “Plan”) and Diversified Benefit Services, Inc., (“Business Associate”).

WHEREAS, pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the U.S. Department of Health & Human Services (“HHS”) promulgated the Privacy Rule, requiring certain individuals and entities subject to the Privacy Standards (each a Covered Entity) to protect the privacy of certain Protected Health Information.

WHEREAS, pursuant to HIPAA, HHS has issued the Security Rule for the protection of Electronic Protected Health Information.

WHEREAS, on March 26, 2013, the federal Health Information Technology for Economic and Clinical Health Act of 2009 was signed into law (the “HITECH Act”).

WHEREAS, the HITECH Act revised many of the requirements of the Privacy Rule and the Security Rule concerning the confidentiality of Protected Health Information and Electronic Protected Health Information, including extending certain HIPAA and HITECH Act requirements directly to business associates, and imposed certain privacy and security obligations on covered entities and business associates in addition to the obligations created by the Privacy Rule and the Security Rule.

WHEREAS, Business Associate provides Section 125 Flexible Benefit Plan Claims Processing & Administration Services to the Plan pursuant to City of Sheboygan, Section 125 – Flexible Benefit Plan Agreement for Service (the “Service Agreement”).

WHEREAS, in connection with the services provided pursuant to the Service Agreement, the Plan will make available and/or transfer to Business Associate certain Protected Health Information that is confidential and must be afforded special treatment and protection under HIPAA, as amended by the HITECH Act.

WHEREAS, in connection with the services provided pursuant to the Service Agreement, Business Associate will have access to and/or receive from the Plan certain Protected Health Information that can be used or disclosed only in accordance with HIPAA, as amended by the HITECH Act.

WHEREAS, HIPAA, as amended by the HITECH Act, requires the Plan to enter into a contract or other arrangement with Business Associate in order to mandate certain protections for the privacy and security of any Protected Health Information that may be transmitted by the Plan to Business Associate in connection the services provided by the Service Agreement, and to receive adequate assurances that Business Associate will comply with certain obligations with respect to the Protected Health Information received in connection with the services provided pursuant to the Service Agreement.

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

1. **Definitions:** Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms are defined in the HIPAA Rules.
 - a. **Breach.** “Breach” shall have the same meaning as the term “breach” in 45 CFR § 164.402.
 - b. **Breach Notification Rule.** “Breach of Notification Rule” shall mean the Standards and Implementation Specifications for Notification of Breaches of Unsecured Protected Health Information under 45 CFR Parts 160 and 164, subparts A and D.
 - c. **Business Associate.** “Business Associate” shall mean Diversified Benefit Services, Inc.
 - d. **Covered Entity.** “Covered Entity” shall mean the same as “The Plan.”
 - e. **Designated Record Set.** “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 CFR § 164.501.
 - f. **Electronic Protected Health Information.** “Electronic Protected Health Information” shall have the same meaning as the term “electronic protected health information” in 45 CFR § 160.103.
 - g. **Electronic Transactions Rule.** “Electronic Transactions Rule” shall mean the final regulations issued by HHS concerning standard transactions and code sets under 45 CFR Parts 160 and 162.
 - h. **Enforcement Rule.** “Enforcement Rule” shall mean the Enforcement Provisions set forth in 45 CFR Part 160.
 - i. **Genetic Information.** “Genetic Information” shall have the same meaning as the term “genetic information” in 45 CFR § 160.103.
 - j. **HIPAA Rules.** “HIPAA Rules” shall mean the Privacy Rule, Security Rule, Breach Notification Rule, and Enforcement Rule.
 - k. **HITECH Act.** “HITECH Act” shall mean the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009.
 - l. **The Plan.** “The Plan” shall mean the same as the Covered Entity, namely City of Sheboygan Section 125 Flexible Benefit Plan.
 - m. **Privacy Rule.** “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E.

- n. **Protected Health Information.** “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR § 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of the Plan pursuant to this Agreement.
 - o. **Required By Law.** “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR § 164.103.
 - p. **Secretary.** “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
 - q. **Security Incident.** “Security Incident” shall have the same meaning as the term “security incident” in 45 CFR § 164.304.
 - r. **Security Rule.** “Security Rule” shall mean the Security Standards for Protection of Electronic Protected Health Information set forth at 45 C.F.R. Part 160 and Part 164, subparts A and C.
 - s. **Subcontractor.** “Subcontractor” shall have the same meaning as the term “subcontractor” in 45 CFR § 160.103.
 - t. **Transaction.** “Transaction” shall have the meaning given the term “transaction” in 45 C.F.R. § 160.103.
 - u. **Unsecured Protected Health Information.** “Unsecured Protected Health Information” shall have the meaning given the term “unsecured protected health information” in 45 CFR § 164.402.
2. **Permitted Uses and Disclosures by Business Associate.** Business Associate is permitted to use and disclose Protected Health Information only as set forth below:
- a. **Functions and Activities on Plan’s Behalf.** To provide services to the Plan as described in the Service Agreement.
 - b. **Business Associate’s Operations.** Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate. Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out Business Associate’s legal responsibilities, provided that—
 - i. The disclosure is Required by Law; or
 - ii. Business Associate obtains reasonable assurance from any person or entity to which Business Associate will disclose Protected Health Information that the person or entity will—



- (1) Hold the Protected Health Information in confidence and use or further disclose the Protected Health Information only for the purpose for which Business Associate disclosed Protected Health Information to the person or entity or as Required by Law; and
- (2) Promptly notify Business Associate of any instance of which the person or entity becomes aware in which the confidentiality of Protected Health Information was breached.

c. **Minimum Necessary.** Business Associate will, in its performance of the functions, activities, services, and operations specified above, make reasonable efforts to use, to disclose, and to request only the minimum amount of Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure, or request, except that Business Associate will not be obligated to comply with this minimum-necessary limitation if neither Business Associate nor Covered Entity is required to limit its use, disclosure, or request to the minimum necessary under the HIPAA Rules. Business Associate and Covered Entity acknowledge that the phrase “minimum necessary” shall be interpreted in accordance with the HITECH Act and the HIPAA Rules.

3. **Prohibition on Unauthorized Use or Disclosure.** Business Associate will neither use nor disclose Protected Health Information, except as permitted or required by this Agreement or in writing by the Plan or as Required by Law. This Agreement does not authorize Business Associate to use or disclose the Plan’s Protected Health Information in a manner that would violate the HIPAA Rules if done by the Plan, except as permitted for Business Associate’s proper management and administration, as described above.

4. **Information Safeguards.**

a. **Privacy of Protected Health Information.** Business Associate will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of Protected Health Information. The safeguards must reasonably protect Protected Health Information from any intentional or unintentional use or disclosure in violation of the Privacy Rule and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Agreement. To the extent the parties agree that Business Associate will carry out directly one or more of the Plan’s obligations under the Privacy Rule, the Business Associate will comply with the requirements of the Privacy Rule that apply to the Plan in the performance of such obligations.



- b. **Security of Plan's Electronic Protected Health Information.** Business Associate will comply with the Security Rule and will use appropriate administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on the Plan's behalf.
 - c. **No Transfer of PHI Outside United States.** Business Associate will not transfer Protected Health Information outside the United States without the prior written consent of the Plan. In this context, a "transfer" outside the United States occurs if Business Associate's workforce members, agents, or subcontractors physically located outside the United States are able to access, use, or disclose Protected Health Information.
5. **Subcontractors.** Business Associate will require each of its Subcontractors to agree, in a written agreement with Business Associate, to comply with the provisions of the Security Rule; to appropriately safeguard Protected Health Information created, received, maintained, or transmitted on behalf of Business Associate; and to apply the same restrictions and conditions that apply to Business Associate with respect to such Protected Health Information.
6. **Prohibition on Sale of Protected Health Information.** Business Associate shall not engage in any sale (as defined in the HIPAA rules) of Protected Health Information.
7. **Prohibition on Use or Disclosure of Genetic Information.** Business Associate shall not use or disclose Genetic Information for underwriting purposes in violation of the HIPAA Rules.
8. **Penalties for Noncompliance.** Business Associate acknowledges that it is subject to civil and criminal enforcement for failure to comply with the HIPAA Rules, to the extent provided by the HITECH Act and the HIPAA Rules.
9. **Compliance with Electronic Transactions Rule.** If Business Associate conducts in whole or part electronic Transactions on behalf of Covered Entity for which HHS has established standards, Business Associate will comply, and will require any Subcontractor it involves with the conduct of such Transactions to comply, with each applicable requirement of the Electronic Transactions Rule and of any operating rules adopted by HHS with respect to Transactions.
10. **Individual Rights.**
 - a. **Access.** Business Associate will, within 21 [must be less than 30] calendar days following the Plan's request, make available to the Plan (or at the Plan's written direction, to an individual or the individual's designee) for inspection and copying Protected Health Information about the individual that is in a Designated Record Set in Business DBSbenefits.com

Associate's custody or control, so that the Plan may meet its access obligations under 45 C.F.R. § 164.524. If the Plan requests an electronic copy of Protected Health Information that is maintained electronically in a Designated Record Set in 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 enable the Plan to meet its electronic access obligations under 45 C.F.R. § 164.524.

- b. **Amendment.** Business Associate will, upon receipt of written notice from the Plan, promptly amend or permit the Plan access to amend any portion of an individual's Protected Health Information that is in a Designated Record Set in the custody or control of Business Associate, so that the Plan may meet its amendment obligations under 45 C.F.R. § 164.526.
- c. **Disclosure Accounting.** To allow the Plan to meet its obligations to account for disclosures of Protected Health Information under 45 C.F.R. § 164.528:
 - i. **Disclosures Subject to Accounting.** Business Associate will record the information specified below ("Disclosure Information") for each disclosure of Protected Health Information, not excepted from disclosure accounting as specified below, that Business Associate makes to the Plan or to a third party.
 - ii. **Disclosures Not Subject to Accounting.** Business Associate will not be obligated to record Disclosure Information or otherwise account for disclosures of Protected Health Information if the Plan need not account for such disclosures under the HIPAA Rules.
 - iii. **Disclosure Information.** With respect to any disclosure by Business Associate of Protected Health Information that is not excepted from disclosure accounting under the HIPAA Rules, Business Associate will record the following Disclosure Information as applicable to the type of accountable disclosure made:
 - (1) **Disclosure Information Generally.** Except for repetitive disclosures of Protected Health Information as specified below, the Disclosure Information that Business Associate must record for each accountable disclosure is: (1) the disclosure date, (ii) the name and (if known) address of the entity to which Business Associate made the disclosure, (iii)

a brief description of the Protected Health Information disclosed, and (iv) a brief statement of the purpose of the disclosure.

(2) **Disclosure Information for Repetitive Disclosures.** For repetitive disclosures of Protected Health Information that Business Associate makes for a single purpose to the same person or entity (including the Plan), the Disclosure Information that Business Associate must record is either the Disclosure Information specified above for each accountable disclosure, or (i) the Disclosure Information specified above for the first of the repetitive accountable disclosures, (ii) the frequency, periodicity, or number of the repetitive accountable disclosures; and (iii) the date of the last of the repetitive accountable disclosures.

iv. **Availability of Disclosure Information.** Business Associate will maintain the Disclosure Information for at least six (6) years following the date of the accountable disclosure to which the Disclosure Information relates. Business Associate will make the Disclosure Information available to the Plan within 45 [**must be less than 60**] calendar days following the Plan's request for such Disclosure Information to comply with an individual's request for disclosure accounting.

d. **Restriction Agreements and Confidential Communications.** The Plan shall notify Business Associate of any limitations in the notice of privacy practices of the Plan under 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information. Business Associate will comply with any notice from the Plan to: (1) restrict use or disclosure of Protected Health Information pursuant to 45 C.F.R. § 164.522(a), or (2) provide for confidential communications of Protected Health Information pursuant to 45 C.F.R. § 164.522(b), provided that the Plan notifies Business Associate in writing of the restriction or confidential communications obligations that Business Associate must follow. The Plan will promptly notify Business Associate in writing of the termination of any such restriction or confidential communications requirement and, with respect to termination of any such restriction, instruct Business Associate whether any of the Protected Health Information will remain subject to the terms of the restriction agreement.

11. Breaches and Security Incidents.

a. Reporting.

- i. **Impermissible Use or Disclosure.** Business Associate will report to the Plan any use or disclosure of Protected Health Information not permitted by this Agreement not more than 10 calendar days after Business Associate discovers such non-permitted use or disclosure.
- ii. **Breach of Unsecured Protected Health Information.** Business Associate will report to the Plan any potential Breach of Unsecured Protected Health Information not later than 60 calendar days after discovery of such potential Breach. If the Business Associate is treated as the legal agent of the Plan, the number of days the Business Associate takes to report counts against the Covered Entity's 60-day deadline to provide required notifications to individuals and, in appropriate cases, to the media and HHS. Business Associate will treat a potential Breach as being discovered in accordance with 45 CFR § 164.410. Business Associate will make the report to the Plan's Privacy Officer. If a delay is requested by a law-enforcement official in accordance with 45 CFR § 164.412, Business Associate may delay notifying the Plan for the applicable time period. Business Associate's report will include at least the following, provided that absence of any information will not be cause for Business Associate to delay the report:
 - (A) Identify the nature of the Breach, which will include a brief description of what happened, including the date of any Breach and the date of the discovery of any Breach;
 - (B) Identify the types of Protected Health Information that were involved in the Breach (such as whether full name, Social Security number, date of birth, home address, account number, diagnosis, or other information were involved);
 - (C) Identify who made the non-permitted use or disclosure and who received the non-permitted disclosure;
 - (D) Identify what corrective or investigational action Business Associate took or will take to prevent further non-permitted uses or disclosures, to mitigate harmful effects, and to protect against any further Breaches;
 - (E) Identify what steps the individuals who were subject to a Breach should take to protect themselves;

(F) Provide such other information, including a written report and risk assessment under 45 CFR § 164.402, as the Plan may reasonably request.

(iii) **Security Incidents.** Business Associate will report to the Plan any Security Incident of which Business Associate becomes aware. Business Associate will make this report available annually, except, if any such Security Incident resulted in a disclosure not permitted by this Agreement or Breach of Unsecured Protected Health Information, Business Associate will make the report in accordance with the provisions set forth above.

b. **Mitigation.** Business Associate shall mitigate, to the extent practicable, any harmful effect known to the Business Associate resulting from a use or disclosure in violation of this Agreement.

12. Obligations of the Plan

a. **Provisions for the Plan to Inform Business Associate of Privacy Practices and Restrictions.**

i. The Plan shall provide Business Associate with the notice of privacy practices that the Plan produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.

ii. The Plan shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

iii. The Plan shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that the Plan has agreed to in accordance with 45 CFR § 164.522.

b. **Permissible Requests by the Plan**

The Plan shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the Plan.

13. Term and Termination

a. **Term.** This Agreement shall be effective as of **1/1/2024** and shall terminate upon termination of the Service Agreement.

b. **Termination for Cause.** Upon the Plan's knowledge of a material breach by Business Associate, the Plan shall provide an opportunity for Business Associate to cure the breach or end the violation and

terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by the Plan, or immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.

c. Treatment of Protected Health Information on Termination.

- i. Except as provided in Paragraph 13.c.ii. below, upon termination of this Agreement, for any reason, Business Associate may retain paper and/or electronic records of the Protected Health Information for a certain period of time based on the Records & Information Management (RIM) policy and the service agreement of the Business Associate following the termination of this Agreement and/or the service agreement between the parties. Business Associate shall, for as long as the Protected Health Information is retained by Business Associate, continue to protect such Protected Health Information under the same terms and conditions as if the termination of this Agreement had not occurred. At the end of such period, Business Associate shall destroy the Protected Health Information as set forth in the Records & Information Management (RIM) policy of the Business Associate. Business Associate shall destroy all Protected Health Information received from the Plan, or created or received by Business Associate on behalf of the Plan. This provision shall apply to Protected Health Information that is in the possession of Subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- ii. In the event that Business Associate determines that destroying the Protected Health Information is infeasible, Business Associate shall provide to the Plan notification of the conditions that make destruction infeasible. Upon mutual agreement of the Parties that destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the destruction infeasible, for so long as Business Associate maintains such Protected Health Information.
- iii. Business Associate's obligation to protect the privacy and safeguard the security of Protected Health Information as specified in this Agreement will be continuous and survive termination or other conclusion of this Agreement.

14. General Provisions

- a. **Definitions.** All terms that are used but not otherwise defined in this Agreement shall have the meaning specified under HIPAA, including its statute, regulations, and other official government guidance.
- b. **Inspection of Internal Practices, Books, and Records.** Business Associate will make its internal practices, books, and records relating to its use and disclosure of Protected Health Information available to the Plan and to HHS to determine compliance with the HIPAA Rules.
- c. **Amendment to Agreement.** This Agreement may be amended only by a written instrument signed by the parties. In case of a change in applicable law, the parties agree to negotiate in good faith to adopt such amendments as are necessary to comply with the change in law.
- d. **No Third-Party Beneficiaries.** Nothing in this Agreement shall be construed as creating any rights or benefits to any third parties.
- e. **Interpretation.** Any ambiguity in the Agreement shall be resolved to permit the Plan and Business Associate to comply with the applicable requirements under the HIPAA Rules.
- f. **Indemnity.** The Business Associate will indemnify and hold harmless the Plan and any affiliate, trustee, officer, director, employee, volunteer or agent of the Plan from and against any claim, cause of action, liability, damage, cost, or expense, including reasonable attorneys' fees and court or proceeding costs, arising out of or in connection with any unauthorized use or disclosure of Protected Health Information or any failure in security measures affecting Protected Health Information or any other breach of the terms of this Agreement by the Business Associate or any person or entity under the Business Associate's control.
- g. **Governing Law, Jurisdiction, and Venue.** This Agreement shall be governed by the law of the State of Wisconsin, except to the extent preempted by federal law.
- h. **Severability.** The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.
- i. **Construction and Interpretation.** The section headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. This Agreement has been negotiated by the parties at arm's length and each of them has had an opportunity to modify the language of the Agreement. Accordingly, the 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 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.

- j. **Notices.** All notices and communications required by this Agreement shall be in writing. Such notices and communications shall be given in one of the following forms: (1) by delivery in person, (2) by a nationally recognized, next-day courier service, (3) by first-class, registered or certified mail, postage prepaid, or (4) by electronic mail to the address that each party specifies in writing.
- k. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to its subject matter and constitutes and supersedes all prior agreements, representations, and understandings of the parties, written or oral, with regard to this same subject matter.

IN WITNESS WHEREOF, Business Associate and the Plan have caused this Agreement to be signed and delivered by their duly authorized representatives, as of the date set forth above.

City of Sheboygan
Section 125 Flexible Benefit Plan
THE PLAN

Diversified Benefit Services, Inc.
BUSINESS ASSOCIATE

By: _____

By: 

Print Name: _____

Print Name: Timothy G. Pederson

Title: _____

Title: President

Date: _____

Date: 11/8/2023