This COBRA Administrative Services Agreement ("Agreement") is entered into by and between **McHenry County** ("Employer") and Discovery Benefits, Inc. ("DBI") as of **01/01/2015** ("Effective Date").

Recitals
Employer desires to retain DBI as an independent contractor to administer certain elements of its COBRA obligations and DBI desires to assist the Employer in the administration of such COBRA obligations. Employer and DBI agree that DBI shall assist in the administration of Employer's COBRA obligations on the terms and conditions set forth within this Agreement, including, without limitation, that: Employer has established one or more health plans that include medical, dental, vision, employee assistance plan, health flexible spending arrangement and/or health reimbursement arrangement benefits ("Plan" or "Employer Plan") for its employees; Employer is the administrator of the Plan; DBI acts as an independent contractor of the Employer; Employer remains responsible for maintaining the Plan, including the establishment of eligibility and paying all benefits owed or established under the Plan to its participants; and DBI is to provide the agreed upon services without assuming any liability beyond the performance of its services as set forth herein.

Now, therefore, in consideration of good and valuable consideration, the parties agree as follows:

Article 1 – COBRA Administrative Services

DBI agrees to provide Employer with the following COBRA administrative services:

1.1 Except for those things that are the Employer's responsibility under this Agreement, DBI shall assume responsibility for proper interpretation, application, and administration of COBRA rules and regulations for the Employer Plan for COBRA administration under DBI's control.

1.2 Provide consultation to Employer in the interpretation and application of regulations concerning COBRA administration as they apply to the Employer's Plan.

1.3 If requested by Employer, mail DBI's standard initial rights notification letter to all active "Covered" employees and spouses at the initiation of this Agreement. "Covered" is defined as any individual covered by the Employer's Plan as set forth in Exhibit A and that qualifies for federal COBRA continuation coverage. The Employer must provide all information reasonably requested by DBI in order to complete this mailing.

1.4 Upon receipt of complete and timely information from Employer, send via accountable mail, within the applicable time frame required by COBRA or upon the effective date of coverage, whichever is later, DBI's standard initial rights notification letter to newly covered employees and spouses of the Employer Plan informing them of their rights under COBRA. If complete information is not timely received from the Employer, DBI will send the notice described in the preceding sentence as soon as administratively practicable after receiving the required information, but such notice may not be provided within the applicable time frame required by COBRA.

1.5 Upon receipt of complete and timely information from Employer, send via accountable mail within the applicable time frame required by COBRA, DBI's standard qualifying event eligibility and election notice to all eligible qualified beneficiaries under the Employer Plan. If complete information is not timely received from the Employer, DBI will send the notice described in the preceding sentence as soon as administratively practicable after receiving the required information, but such notice may not be provided within the applicable time frame required by COBRA.

1.6 For periods prior to December 31, 2014, send DBI's standard HIPAA Certificate of Creditable Coverage to qualified beneficiaries: when there is a qualifying event that causes a loss in coverage; when COBRA coverage terminates; and when requested by a qualified beneficiary at any time within twenty-four (24) months of losing coverage. DBI does not issue certificates to individuals losing coverage when there is no qualifying event.

1.7 Mail DBI's standard payment coupons and member portal login notice to qualified beneficiaries when COBRA is elected and the first COBRA premium payment has been received. As part of the administrative service fees that DBI charges under this Agreement, DBI shall have the right to retain the COBRA administrative fees that are billed to and paid by COBRA continuants. For purposes of this Agreement, the COBRA administrative fees retained by DBI shall include the two percent (2%) additional premium allowed by COBRA and charged to COBRA continuants.

1.8 Qualified Beneficiaries can pay COBRA premiums by check or automatic recurring ACH without any additional charges. DBI will also provide qualified beneficiaries an additional option to pay COBRA premiums online with either a credit card or a single occurrence ACH request. To the extent permitted by law and the applicable credit card operating rules and regulations, an additional online processing fee, charged by the online third party vendor and payable by the third party beneficiaries, applies

1.9 for the credit card or single occurrence ACH payment method. The fee is collected by DBI and remitted to the third party vendor and there is no mark up by DBI with respect to the fee. DBI represents that its payment methods comply with COBRA.

1.10 Deposit insurance premiums in a Custodial Account for the benefit of Employer in the manner described in Article 3.

1.11 Collect, track, process and remit the COBRA premiums that are paid by the qualified beneficiaries to the Employer. A Remit to Carrier option may be available for employers requesting this option. A completed COBRA Authorization Agreement for Direct Payment form is required for employers requesting the Remit to Carrier option. Failure to provide the completed COBRA Authorization Agreement for Direct Payment form will result in DBI remitting premiums to the Employer.

1.12 Coordinate with Employer and insurance carriers on any questions pertaining to a qualified beneficiary's COBRA eligibility and payment status.

1.13 Using DBI's standard communications, maintain communication with the qualified beneficiaries who have elected COBRA coverage concerning eligibility status, Medicare eligibility, advance termination notice for the individual conversion, verification of termination, change of address, benefit and rate changes.

1.14 Provide real-time, online access to information related to the status of qualified beneficiaries and those who have elected COBRA coverage.

1.15 Provide the information required in the event of an IRS or other third party audit as follows: written compliance procedures DBI uses in the administration of COBRA, samples of forms and notices, records that pertain to a qualified beneficiary's actual qualifying event, and a description of how DBI administers COBRA coverage.

1.16 Supply Employer with the initial login information for accessing the Employer web portal for notifying DBI when an employee, spouse or dependent is added to coverage for the first time and notifying DBI when an employee, spouse or dependent has experienced a qualifying event and is eligible for COBRA continuation under the Employer's Plan.

1.17 Supply Employer with the required DBI file format for uploading employee demographic, benefit and qualifying event information to the Employer web portal.

1.18 Provide a toll-free number during DBI normal business hours for questions concerning COBRA compliance, regulations or payment issues. From time-to-time and in compliance with applicable federal and state laws, DBI may monitor and/or record calls which are made to and from the customer service line for quality assurance and training purposes, and/or to ensure that DBI's services fully comply with the terms of this Agreement.

1.19 Notify a qualified beneficiary if COBRA coverage terminates earlier than the end of the maximum period of coverage applicable to the qualifying event that entitled the individual to COBRA coverage. The notice will be provided as soon as administratively practicable after DBI determines that COBRA coverage will be terminated early.

1.20 Extend the maximum COBRA period in cases of disability and second qualifying events based on the rules of COBRA.

1.21 Send DBI's standard system generated open enrollment/rate change letter during open enrollment. If requested by Employer, DBI will provide participants with a link to additional plan and benefit description materials provided by Employer through the participant web portal for participant viewing and printing.

Article 2 – The Employer

Employer agrees to provide and be responsible for the following in the COBRA administrative process:

2.1 Provide to DBI accurate "Covered" employee counts on a monthly basis or as requested by DBI. "Covered" is defined as any individual covered by the Employer's Plan as set forth in Exhibit A and that qualifies for federal COBRA continuation coverage.

2.2 Provide to DBI complete demographic and benefit information on qualified beneficiaries currently receiving COBRA coverage under the Employer Plan upon the inception of this Agreement, allowing DBI to take over the administration of individuals currently on COBRA.

2.3 Enter information or upload an electronic file via the Employer web portal containing complete demographic and benefit election information for newly covered employees, spouses and dependents within seven (7) days of obtaining coverage under the Employer Plan.

2.4 The Employer shall notify DBI of any initial qualifying event that occurs with respect to an employee, spouse or dependent. Employer shall also notify DBI of a second qualifying event should Employer be notified by an employee, spouse or dependent. Such notice shall be provided using the procedures specified by DBI within thirty (30) days of the qualifying event or the date coverage is lost on account of the qualifying event, whichever is later, unless the qualifying event is the employee's divorce or a dependent aging out of the Plan in which case the notice shall be provided within seven (7) days following the Employer's receipt of notice by an employee, spouse or dependent of such qualifying event. Unless directed otherwise by DBI, notice of a qualifying event shall be provided by entering the required qualifying event information directly into the Employer web portal or uploading an electronic file via the Employer web portal. The Employer shall be solely responsible for determining whether an employee, spouse or dependent has had an initial qualifying event under the Employer Plan and the date of the qualifying event.

2.5 Be solely responsible for its insurers and third party administrators (collectively "Carriers") to send a separate billing statement to DBI that includes only qualified beneficiaries electing COBRA coverage when the remit to Carrier option is selected and DBI is remitting premiums to Carrier. Employer agrees to provide a completed COBRA Authorization Agreement for Direct Payment form to DBI for remit to Carrier. Failure to provide the completed COBRA Authorization Agreement for Direct Payment form will result in DBI remitting premiums back to the Employer. Employer is at all times responsible to pay to DBI its portion of the premium, where applicable, prior to DBI remitting premiums to the Carrier.

2.6 Be solely responsible for reconciling the Carrier billings with the online reports provided by DBI through the Employer web portal. Many Carriers restrict the ability to retroactively terminate COBRA coverage (even in cases of non-payment of premiums by the qualified beneficiary). DBI shall not be liable for paying any loss or damage (including premiums) to the Employer with respect to any retroactive termination of COBRA coverage, provided that DBI has performed in accordance with this Agreement.

2.7 Be solely responsible for selecting a determination period, and establishing and advising DBI of the applicable premium rates to be charged for COBRA continuation coverage. Employer shall notify DBI in writing at least forty-five (45) days in advance of the applicable billing date of any changes in premium rates affecting participants electing COBRA coverage under the Employer Plan and at least forty-five (45) days in advance of the applicable billing date of any changes in premiums applicable to participants during an open enrollment period.

2.8 Be solely responsible for differences in premium payments paid by qualified beneficiaries when notification of rate changes is not communicated to DBI at least forty-five (45) days in advance, causing payments made by COBRA continuants to be incorrect for the new determination period.

2.9 Be solely responsible for advising DBI of any changes in the benefits and options provided by the Employer Plan.

2.10 Be solely responsible for complying with ERISA, the Internal Revenue Code, HIPAA and any other applicable federal, state and/or local laws with respect to the Employer Plan, other than the COBRA responsibilities assumed by DBI under this Agreement.

2.11 Be solely responsible for the review and payment of all claims under the Employer Plan and ERISA, including, without limitation, claims for benefits and claims for eligibility determinations under the Employer Plan. DBI shall not be responsible to receive or review claims for benefits under the Employer Plan, and DBI shall not be liable for the payment or funding of any claims for benefits in connection with the Employer Plan, including, without limitation, where sought as damages in an action against the Employer or the Employer Plan, and any occurrences prior to the effective date of this Agreement. Nothing in this Section 2.11 shall prevent either party from pursuing any rights that it may have under Section 7.6.

2.12 Be solely responsible for maintaining and providing the following information in the event of an IRS or any third party audit: written internal compliance procedures used for notifying DBI of a newly covered employee, spouse or dependent, a qualifying event, a report of terminations for each tax year, or when there are rate and benefit changes.

2.13 Provide the release of any information necessary for COBRA compliance and administration under this Agreement.

2.14 Be solely responsible for providing plan and benefit descriptions (examples include but are not limited to Summary of Benefits and Coverage (SBC), SPDs and/or benefit plan booklets) to qualified beneficiaries during open enrollment. DBI's standard process is to provide a link to these additional materials through the participant web portal for participant viewing and printing. If requested by Employer, DBI may include the additional information with its standard open enrollment/rate change letter under the following terms and conditions: Employer provides DBI with an electronic PDF image of the additional open enrollment materials; a handling fee of $1.00 per page (duplex) will apply for the additional materials; additional materials are limited to a total of 25 duplexed pages (including DBI's standard open enrollment/rate change letter).

2.15 Employer acknowledges and agrees that the COBRA Administrative Services provided by DBI pursuant to this Agreement relate to enrollment and disenrollment in the Plan, and that these services, to the extent permitted under the Health Insurance Portability and Accountability Act, shall be deemed to be performed by DBI on behalf of the Employer, in its capacity as the sponsor of the Plan. Employer further acknowledges and agrees that DBI may use or disclose enrollment or disenrollment information that it receives from Employer with respect to a particular qualified beneficiary to provide additional services to the qualified beneficiary without cost to the Employer.

Article 3 – Custodial account

3.1 By signing this Agreement, Employer appoints DBI as custodian of Employer funds for the purposes and upon the terms and conditions set forth in this Agreement, and DBI accepts such appointment and agrees to act as custodian hereunder and to hold any Employer funds received hereunder in accordance with the terms and conditions set forth in this Agreement.

3.2 DBI shall open and maintain one or more depository accounts (the "Custodial Account") at Bell State Bank & Trust (the "Bank"), Fargo, ND and hold in such Custodial Account all premiums received from qualified beneficiaries, less any portion of the premium payment that constitutes administrative fees payable by the qualified beneficiary. Upon deposit, such premiums shall become "Employer Funds" (minus any applicable fees or other costs as set forth in this Agreement). For administrative convenience and to reduce costs, DBI shall hold Employer Funds of the Employer together with similar funds from other employers in a single Custodial Account (or one or more Custodial Accounts as determined by DBI). However, DBI shall maintain records as to the exact amount of funds allocated to each employer so that each employer has a legal right to the specific amount of its funds held in the Custodial Account. To that end, at all times, the assets comprising each employer's funds in the Custodial Account shall be considered a separate subaccount for purposes of this Agreement. Depending upon the context, the term, "Custodial Account," shall refer to either the separate subaccount for the Employer or all of the subaccounts for all employers in the aggregate.

3.3 Employer and DBI intend and agree that all Employer Funds transferred by the Employer to the Custodial Account shall be comprised of and shall remain the general assets of Employer. Except to the extent that outstanding checks have been written or withdrawals made against the Custodial Account balance on behalf of Employer, the Employer Funds may be withdrawn by the Employer at any time (minus any applicable fees or other costs as set forth in this Agreement) and are subject to Employer's general creditors in the same manner as funds contributed to Employer's ordinary checking accounts.

3.4 DBI shall forward health insurance premiums from the Custodial Account to insurance companies, Employer, or Employer's designee as directed by Employer and in accordance with this Agreement and Employer's group health plan. DBI shall neither have nor shall be deemed to have any discretion, control, or authority with respect to the disposition of Employer Funds.

3.5 Employer acknowledges and understands that DBI may receive interest from time to time on the funds held in the Custodial Account and that any such interest received by DBI shall be part of DBI's compensation. Employer acknowledges and understands that compensation otherwise charged by DBI for services under the Agreement would be higher if it did not retain such interest on these funds. The period during which interest may be earned begins on the date the funds are transferred to the Custodial Account and ends when this Agreement terminates. Funds shall be disbursed on a first-in-first-out basis.

3.6 Upon Employer's written request, DBI shall provide Employer with an accounting of all assets, transfers and transactions involving the Custodial Account, including description of all receipts, disbursements and other transactions. Bank charges may apply for providing copies of checks, statements or other certified documentation.

3.7 DBI may resign from its duties as custodian pursuant to this Article 3 at any time by giving written notice to Employer no less than sixty (60) days prior to the effective date of such resignation; provided, in any event, that such resignation shall not be effective until a successor custodian has been appointed or the assets in the Custodial Account have been returned to Employer.

Article 4 – Confidentiality

Neither DBI nor Employer (each a "Party") shall disclose Confidential Information of the other Party. The receiving Party shall use the same degree of care as it uses to protect its own Confidential Information of like nature, but no less than a reasonable degree of care, to maintain in confidence the Confidential Information of the disclosing Party. The foregoing obligations shall not apply to any information that (a) is at the time of disclosure, or thereafter becomes, part of the public domain through a source other than the receiving Party, (b) is subsequently learned from a third party that does not impose an obligation of confidentiality on the receiving Party, (c) was known to the receiving Party at the time of disclosure, (d) was generated independently by the receiving Party, or (e) is required to be disclosed by law, subpoena or other process. DBI may transfer Employer's or the Plan's Confidential Information to a governmental agency or other third party to the extent necessary for DBI to perform its obligations under this Agreement or if Employer has given DBI written authorization to do so. For purposes of this paragraph, "Confidential Information" shall mean any information identified by either Party as "Confidential" and/or "Proprietary", or which, under the circumstances, ought to be treated as confidential or proprietary, including non-public information related to the disclosing Party's business, employees, service methods, software,

documentation, financial information, prices and product plans (including Information as defined in Section 7.4). DBI reserves the right to independently use its experience and know-how, including processes, ideas, concepts and techniques developed in the course of performing services under this Agreement. DBI represents and warrants that it has implemented and maintains a written and comprehensive information security program, and complies with all applicable laws and regulations, including without limitation state privacy and data security laws and regulations, such as the Massachusetts Standards for the Protection of Personal Information of Residents of the Commonwealth (201 CMR 17.00).

Article 5 – Term of the Agreement

5.1 The term of this Agreement shall commence as of the Effective Date and shall continue for the longer of (a) a period of twelve months or (b) the time period for which the administrative fees are guaranteed as listed in Exhibit B (the "Initial Term"). This Agreement shall automatically renew for another twelve (12) months at the end of the Initial Term and every twelve (12) months thereafter, unless terminated in writing by either Party within sixty (60) days prior to the end of the Initial Term or prior to the end of any subsequent twelve (12) month term. Notwithstanding the foregoing, DBI reserves the right to increase fees at any time that are caused by Federal postal rate increases, increases in bank fees, or that are due to Federal legislative changes affecting COBRA. DBI reserves the right to increase fees due to the provision of additional services to the Employer by DBI that were not included in or contemplated by this Agreement on the Effective Date.

5.2 Employer shall pay all charges that have accrued up to the date of the termination within thirty (30) days after the date of the termination.

5.3 This Agreement may be terminated at any time by either party without cause and without liability, by written notice of intention to terminate given to the other party, to be effective as of a date certain set forth in the written notice, which shall not be less than sixty (60) days from the date of such notice.

5.4 Upon termination of this Agreement, any funds in the Custodial Account that have not been disbursed to the insurance companies in accordance with the terms and conditions of this Agreement shall be returned to Employer (minus any applicable fees or other costs as set forth in this Agreement).

5.5 The Agreement shall automatically terminate:

(a) If any law is enacted or interpreted to prohibit the continuance of this Agreement, upon the effective date of such law or interpretation; or

(b) If any administrative fee for any service provided by DBI to Employer remains unpaid to DBI beyond thirty (30) days past the due date, upon notification by DBI to the Employer in writing that DBI intends to exercise its option to enforce this provision.

If either Party is in default under any provision of this Agreement, the other Party may give written notice to the other Party of such default. If the defaulting Party has not used good faith efforts to cure such breach or default within thirty (30) days after it receives such notice, or if good faith efforts to cure have begun within thirty (30) days but such cure is not completed within sixty (60) days after receipt of the notice, the other Party shall have the right by further written notice (the "Termination Notice") to terminate the Agreement as of any future date designated in the Termination Notice.

5.6 When this Agreement is terminated under Sections 5.1, 5.3 or 5.5, DBI will immediately cease the performance of any further services under this Agreement unless both Parties agree that DBI shall continue performing services during any post-termination "run-out" period. If the Employer engages DBI to administer a post-termination "run-out period," DBI will invoice and collect fees based on the fee schedule in place during the regular contract period. Upon receipt of the "run-out fee," DBI will continue the processing of qualifying events, initial notices, the collection and tracking of continuant premiums, forwarding premiums to the Employer and processing and reporting of COBRA elections and terminations with respect to those qualified beneficiaries who incurred a qualifying event prior to the date the Agreement was terminated.

5.7 Upon the completion of the later of the Agreement, or any agreed-upon "run-out period," DBI will cease providing COBRA administration services, and the Employer shall be immediately responsible for all aspects of COBRA administration. DBI shall also return any Employer Funds in the Custodial Account. However, the return of such funds shall remain subject to the completion of a final accounting of all account activities, as well as the deduction of applicable unpaid fees and other expenses under this Agreement or any other agreement between the parties. If necessary, DBI shall have the immediate right to demand and pursue collection of any unpaid fees, reimbursements or other amounts that are due and owing to DBI as of the date of termination pursuant to the terms of this Agreement or any other agreement between the parties.

Article 6 – Cost of Administration

6.1 Plan Administrative Services Fees

Employer shall pay DBI a fee for its services under this Agreement. This fee shall be payable in accordance with the fee schedule attached as Exhibit B. Monthly fees will be invoiced monthly and are due within thirty (30) days after the date of the invoice.

6.2 Compliance with Anti-Rebating Laws

Employer represents and warrants that, if someone other than Employer is paying DBI's fees on behalf of the Employer, such payment shall not violate any applicable anti-rebating laws. Furthermore, Employer agrees to hold DBI harmless (including reasonable attorney fees and costs) from any and all losses which may result from a breach of this provision.

6.3 Past Due Amounts

Notwithstanding anything in this Agreement or any other agreement between the Parties to the contrary, if the Employer fails to pay DBI within the required time period any undisputed amount that is due as a result of any product or service provided by DBI to the Employer under this Agreement or any other agreement between the Parties, including, without limitation, services provided with respect to flexible spending arrangements, health reimbursement arrangements, qualified transportation programs, individual premium reimbursement accounts or health savings accounts, DBI shall be permitted to deduct the undisputed past due amount from any funds held by DBI that were provided by the Employer pursuant to this Agreement or any other agreement between the parties without prior notice and without prior approval of the Employer. This right of offset shall be in addition to any other remedies that DBI may have in this Agreement or any other agreement between the parties with respect to such non-payment, including, without limitation, any right to terminate the Agreement, regardless of whether the past due amount is paid in full as a result of the offset rights provided herein.

Article 7 – Miscellaneous Provisions

7.1 Limitations. DBI shall:

(a) Have no duty with respect to the funding of premiums by Employer or qualified beneficiaries who elect COBRA;

(b) Not be liable for paying any premiums of a qualified beneficiary to a Carrier or the Employer to the extent that DBI did not receive the corresponding payment from the qualified beneficiary, Employer or third party;

(c) Not be liable for any failure of Employer to remit to the Carriers of the Employer Plan any funds the Employer receives from DBI;

(d) Not be liable for any failure of Employer to reconcile its Carrier billings to online reports provided by DBI through the Employer web portal;

(e) Not be liable for any failure of Employer to modify its Carrier billing and notify Carriers of a COBRA continuant's termination from COBRA coverage when DBI remits premiums paid by continuants to Employer;

(f) Not be responsible for failure of delivery of any notice mailed by DBI using the qualified beneficiary information provided to DBI by Employer; and

(g) Not be responsible for any loss or damage suffered by any participant, continuant, the Employer or the Employer Plan, should DBI fail to give a required notice because DBI did not receive notice of an event for which a notice was required or the proper address to which the notice was to be sent.

7.2 Audit Rights

Employer may inspect any COBRA compliance transactions, procedures, records and participant files relating to Employer's employees (and their spouses and dependents), at DBI's office and at a time reasonably acceptable to DBI, upon providing 10 business days advance written notice to DBI.

7.3 Relationship of the Parties

Employer and DBI acknowledge and agree that DBI is retained under this Agreement as an independent contractor of the Employer to assist the Employer with its obligations to comply with the continuation coverage provisions of COBRA, and that DBI is not a fiduciary under ERISA and lacks any discretion hereunder. Employer agrees that use of or offset of amounts in the Custodial Account to pay for fees or other amounts due to DBI under this Agreement or any other agreement between the parties shall constitute an Employer action that is authorized by the Employer under this Agreement. Employer agrees that such actions are not discretionary acts of DBI and do not create fiduciary status for DBI. The parties hereto further acknowledge that DBI is an independent contractor and not a joint venturer with or partner, agent or employee of Employer. The parties further agree that DBI does not provide any legal, tax or accounting advice to the Plan and/or Employer.

7.4 Reliance by DBI

(a) DBI shall provide the services in accordance with this Agreement based on Information that is provided to DBI by Employer, any designee or agent of Employer (as designated by Employer) and qualified beneficiaries. For this purpose, "Information" means all data, records and other information supplied to DBI, obtained by DBI or produced by DBI (based on data, records or other information supplied to, or obtained by, DBI) in connection with performing the services pursuant to this Agreement, regardless of the form of the Information (e.g., paper, oral, electronic etc.) or the manner in which the Information is provided to DBI.

(b) Employer has authorized and instructed DBI in this Agreement to implement its standard administrative forms and procedures to provide services in accordance with this Agreement. DBI's standard administrative procedures may be revised by DBI at any time without notice. DBI shall be fully protected in relying upon representations by Employer set forth in this Agreement and communications made by or on behalf of Employer in effecting its obligations under this Agreement. DBI is entitled to rely on the most current Information in its possession when providing services under this Agreement. DBI is not responsible for any acts or omissions it makes in reliance on: (i) direction or consent by Employer, any designee or agent of Employer (as designated by Employer) or a qualified beneficiary; or (ii) inaccurate, misleading or incomplete Information. Nothing in this Section 7.4(b) shall prevent either party from pursuing any rights that it may have under Section 7.6.

(c) Employer and DBI agree that if Employer provides DBI with specific written instructions (in a form acceptable to DBI) to provide services in a manner other than in accordance with DBI standard forms and procedures, DBI may (but need not) comply with Employer's written instructions, provided that, to the extent that DBI complies with such instructions, Employer and not DBI shall be solely responsible for DBI's actions so taken, and Employer agrees to hold DBI harmless (including reasonable attorney fees and costs) and expressly releases all claims against DBI in connection with any claim or cause of action, which results from or in connection with DBI following Employer's written instructions.

7.5 Online Employer Account

In the event Employer accesses services provided by DBI online or through any mobile or other electronic devices ("Online Account"), Employer is solely responsible for: (i) designating who is authorized to have access to the Online Account; (ii) safeguarding all of Employer's passwords, usernames, logins or other security features used to access the Online Account ("Online Account Access"); (iii) Employer's use of the Online Account under any usernames, logins or passwords; (iv) ensuring that use of the Online Account complies fully with the provisions of this Agreement; and (v) any unauthorized access, or use, of the Online Account caused by Employer's actions or inactions, including, without limitation, its failure to safeguard the Online Account or Online Account Access. Employer is solely responsible for the maintenance and routine review of computing and electronic system usage records (i.e., log files) and the security of its own data, data storage, computing devices, other electronic systems, and network connectivity. Employer acknowledges and agrees that DBI is not liable to Employer, Employer's employees or any other third-party for any consequences, losses, or damages resulting from unauthorized access or use of the Online Account as set forth in this section.

7.6 Responsibility of the Parties and Indemnification

a) Subject to the limitations in Section 7.10, DBI will be liable to and will defend, indemnify and hold harmless Employer, and its respective officers, directors, employees, agents, representatives, successors and permitted assigns from and against any and all Charges, liability, damages, costs, losses and expenses, including attorney fees, disbursements and court costs, reasonably incurred by Employer in connection with any threatened, pending or adjudicated claim, demand, action, suit or proceeding by any third party which was caused solely and directly by DBI's willful misconduct, criminal conduct, material breach of the Agreement, or violation of the HIPAA privacy or security rules related to or arising out of the services performed by DBI under this Agreement.

b) Except as provided in (a) above, Employer will be liable to and will defend, indemnify and hold harmless DBI, and its respective officers, directors, employees, agents, representatives, successors and permitted assigns from and against any and all Charges, liability, damages, costs, losses and expenses, including attorney fees, disbursements and court costs, reasonably incurred by DBI in connection with any threatened, pending or adjudicated claim, demand, action, suit or proceeding by any third party which was caused solely and directly by Employer's willful misconduct, criminal conduct, material breach of the Agreement, or violation of any applicable law including the HIPAA privacy or security rules related to or arising out of the services performed by DBI under this Agreement.

c) For purposes of this indemnification provision, "Charges" means (i) excise taxes imposed under Code Section 4980B, subject to the provisions of the aggregate limitations set forth in Code Section 4980B and the right of the assessed party to challenge the Internal Revenue Service with respect to all or part of the imposition of such excise taxes; and/or (ii)

penalties (in an amount up to $110 per day) that are imposed by a court under Section 502(c)(1) of ERISA and that are paid. A "Charge" shall not include the payment of the claims for benefits under the terms of the Employer Plan.

d) Notwithstanding anything in this Section to the contrary, neither Party shall be entitled to indemnification under this Section in circumstances where the Charge sought hereunder result from: (i) the indemnifying Party (the "Indemnitor") following the written instruction of the Party seeking indemnification (the "Indemnitee"); (ii) reasonable reliance by the Indemnitor on information furnished by the Indemnitee; or (iii) the actions or inactions of the Indemnitor in circumstances where the Indemnitor requested, but did not receive, information or guidance from the Indemnitee, which information or guidance the Indemnitee is obligated to provide under the Agreement or which is within the sole control of the Indemnitee under the Employer Plan.

e) The party seeking indemnification under (a) or (b) above must notify the indemnifying party within twenty (20) days in writing of any actual or threatened action, suit or proceeding to which it claims such indemnification applies. Failure to so notify the indemnifying party shall not be deemed a waiver of the right to seek indemnification, unless the actions of the indemnifying party have been prejudiced by the failure of the other party to provide notice within the required time period.

f) In the event of a legal, administrative or other action arising out of the administration, processing or determination of a claim for Plan benefits which is filed or asserted against DBI ("Claim Litigation"), DBI may, at its election, select and retain its own counsel to protect its interest. DBI shall be responsible for payment of all legal fees and expenses reasonably incurred by it in defense of Claim Litigation unless the Claim Litigation is attributable to the Employer's actions or inactions in which case the Employer shall be responsible for payment of DBI's legal fees and expenses. DBI shall consult with the Employer before settling Claim Litigation, but DBI shall have the sole discretion to resolve Claim Litigation. DBI and the Employer shall cooperate fully with each other in the defense of Claim Litigation. In addition, nothing in this subsection (d) shall prevent DBI and/or the Employer from pursuing any rights that such party has under subsection (a) or (b) of this Agreement.

7.7 Employer Plan Data

a) DBI agrees to retain for eight (8) years Employer Plan records under this Agreement, including without limitation records of all assets and transactions involving the Custodial Account. Upon termination of this Agreement, DBI will maintain Employer's records in an electronic format up to eight (8) years.

b) Following the Agreement's termination and provided all fees have been paid, DBI will cooperate with Employer (or Employer's subsequent service provider) to affect an orderly transition of services covered by the Agreement and will release to Employer (or Employer's subsequent service provider), in DBI's standard format, a copy of all data, records and files regarding qualified beneficiaries within a reasonable time period following the termination date. All costs associated with the release of data, records and files from DBI to Employer shall be paid by Employer.

c) Upon termination of this Agreement, DBI will be entitled to retain a copy of all "Information" (as defined in Section 7.4), including any data, records and files released by DBI pursuant to Section 7.7(b), and will be entitled to continue to use and disclose such Information for claims, audit, legal and contractual compliance purposes to the extent permitted by law.

7.8 Health Plan Identifier

Employer acknowledges and agrees that DBI does not, and shall not, have any responsibility for obtaining one or more health plan identifiers (HPID) for the Plan from the Enumeration System identified in 45 CFR § 162.508 or for updating the Enumeration System with respect to the HPID.

7.9 Intellectual Property

All materials, including, without limitation, documents, forms (including data collection forms provided by DBI), brochures, tip sheets, posters, and online content ("Materials") furnished by DBI to Employer are licensed (not sold). Employer is granted a personal, non-transferable and nonexclusive license to use Materials solely for Employer's own internal business use. Employer does not have the right to copy, distribute, reproduce, alter, display, or use these Materials or any DBI trademarks for any other purpose. Employer agrees that (a) it will keep Materials confidential and will use commercially reasonable efforts to prevent and protect the content of Materials from unauthorized use and (b) its license to use Materials ends on the termination date of this Agreement. Upon termination, Employer agrees to destroy Materials or, if requested by DBI, return them to DBI.

7.10 Limitation of Remedies

In no event shall either Party be liable to the other for consequential, special, exemplary, punitive, indirect or incidental damages, including without limitation any damages resulting from loss of use or loss of profits arising out of or in connection with this Agreement, whether in an action based on contract, tort (including negligence) or any other legal theory whether

existing as of the Effective Date or subsequently developed, even if the Party has been advised of the possibility of such damages. In addition, notwithstanding any other provision in this Agreement to the contrary, the maximum total liability of DBI to Employer shall be limited to direct money damages in an amount not to exceed the dollar amount that is available to cover such liability under the insurance policy or policies provided for in Section 7.19. This remedy is Employer's sole and exclusive remedy. No action under this Agreement may be brought more than two (2) years after the cause of action has accrued.

7.11 Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements and understandings regarding the subject matter hereof, whether written or verbal. Any amendment to this Agreement must be in writing and signed by authorized representatives of both Parties. This Agreement may be signed in one or more counterparts, each of which shall be considered an original, but all of which shall constitute one and the same instrument. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, assigns and successors in interest. This Agreement may not be assigned without prior written agreement of the other Party.

7.12 Governing Law

All questions with respect to the construction of this Agreement and the rights and liabilities of the parties except as otherwise provided, shall be determined in accordance with the laws of the State of North Dakota.

7.13 COBRA

COBRA means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and the related regulations and interpretations by the Internal Revenue Service and Department of Labor. The terms, "qualifying event" and "qualified beneficiary" shall have the meanings given to them in COBRA.

7.14 Severability

If any provision of this Agreement is determined by a court to be unenforceable or invalid, such determination shall not affect any other provision, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein.

7.15 Survival

Sections 2.8 and 2.15, Article 4, Sections 5.3 and 5.6, Section 6.2 and Article 7 shall survive the termination of this Agreement.

7.16 Notice

DBI shall not be bound by any communication until it has been received at its office at 4321 20th Avenue SW, Fargo, ND 58103 or at such other address as it has specified to the Employer. The Employer shall not be bound by any communication until it has been received at the address shown below or such other address as it has specified by Employer to DBI.

7.17 Disputes

The parties shall cooperate in good faith to resolve any and all disputes (each, a "Dispute") that may arise under or in connection with this Agreement. The existence or resolution of any Dispute as to a matter shall not reduce or otherwise affect the payment or performance by Employer its obligations under this Agreement as to any other matter, unless pursuant to the terms of any such resolution. Employer and DBI shall attempt in good faith to resolve any Dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Either Party may give the other Party written notice of any Dispute not resolved in the normal course of business. Within fifteen (15) days after delivery of the notice, the receiving Party shall submit to the other Party a written response. Any notice and the response shall each include: (i) a statement of each Party's position and a summary of arguments supporting that position; and (ii) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within thirty (30) days after delivery of the disputing Party's notice, the executives of the parties subject to the dispute shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to attempt to resolve the Dispute. All reasonable requests for information made by one Party to the other will be honored.

7.18 Force Majeure

Neither DBI nor Employer, as applicable under the circumstances, shall be liable or deemed to be in default for failure to perform or delay in the performance of any of their respective obligations under this Agreement (other than the Employer's obligation to provide funding for claims or pay service fees) to the extent that such failure or delay results from any act of God; military operation; terrorist attack; widespread and prolonged loss of use of the Internet; national emergency, government restrictions or disruption of the financial markets.

7.19 Insurance

During the term of this Agreement, DBI shall maintain general, professional, and cyber liability insurance with policy limits of not less than $1,000,000 per occurrence and in the aggregate for the purpose of providing coverage for claims arising out of the performance of its services under this Agreement. Upon request, DBI shall provide Employer with a certificate or certificates of insurance reflecting such insurance coverages.

7.20 Tax Obligations

The Plan and/or the Employer is responsible for any state or federal tax, fee, assessment, surcharge and/or penalty imposed, assessed or levied against or with respect to the Plan and/or DBI relating to the Plan or the services provided by DBI pursuant to this Agreement, including those imposed pursuant to The Patient Protection and Affordable Care Act of 2010 ("PPACA"), as amended from time to time. This includes the funding, remittance and determination of the amount due for PPACA required taxes and fees. In the event that DBI is required to pay or elects to pay any such tax, fee, assessment, surcharge and/or penalty, DBI shall report the payment to the Employer and the Employer shall promptly reimburse DBI for such amount (or for Employer's proportionate share of such amount, as determined by DBI), except as provided in Section 7.6. This payment shall be in addition to the Plan administrative service fees described in Section 6.1. The Employer is at all times responsible for the tax consequences in the establishment and operation of the Plan.

7.21 Miscellaneous.

Any number of counterparts of this Agreement may be signed and delivered, each of which shall be considered an original and all of which, together, shall constitute one and the same instrument. Nothing express or implied in this Agreement is intended to confer, and nothing herein shall confer, upon any person other than the parties hereto any rights, remedies, obligations or liabilities whatsoever.

Authorization
This Agreement, including any attachments or other exhibits, is accepted and agreed to by the Parties as of the effective date of this Agreement.

Signed for Employer by	Signed for DBI by:
	Suzanne Rehr, Chief Compliance Officer/ EVP
Title	
	4321 20th Avenue SW Fargo, ND 58103
Employer Address (for Section 7.16 notice purposes)	

Exhibit A
Covered Services

A.1 Covered Plans. The Plans covered by this Agreement include the following:

Plans	Plans Covered Under This Agreement
Major Medical	☐
Group Dental	☐
Group Vision	☐
Health Flexible Spending Account (FSA)	☐
Health Reimbursement Arrangement (HRA)	☐
Rx Plans	☐
Employee Assistance Program (EAP)	☐
Other (please define) _____	☐

Exhibit B
COBRA Fee Schedule

COBRA Administrative Fees	
Monthly Administrative Fee (2% administrative fee retained by Discovery)	$0.65 per covered employee
Initial Notification	Included
COBRA Notification and Election	Included
HIPAA Certificates (Certificate of Coverage and HIPAA Portability Rights)	Included
Election Tracking	Included
Premium Billing and Remittance	Included
Termination Tracking and Notification	Included
Postage and Printing (Additional charges may apply for non-standard and/or expedited requests.)	Included for standard mailings and materials
Additional Open Enrollment Materials	A handling fee of $1.00 per page (duplex) will apply for additional materials (additional materials are limited to 25 duplexed pages that include DBI's standard open enrollment/rate change letter).
Minimum Monthly Fee (Applies only if the monthly administrative fee times the number of covered lives is less than this amount.)	$85.00

Discovery does not charge implementation, set-up or renewal fees. Fees are listed net of commissions.

Monthly administrative fees are guaranteed for three years. Discovery reserves the right to increase fees at any time that are caused by Federal postal rate increases, increases in bank fees, or that are due to Federal legislative changes.

GPID:23898

GPID 23898 Employer Tax ID

COBRA Business Associate Agreement

This Business Associate Agreement (the "Agreement") is made and entered into effective as of **01/01/2015**, by and between Discovery Benefits, Inc. and its subsidiaries and affiliate companies ("DBI") and **McHenry CountyHealth Plan** (the "Plan"), which is sponsored by **McHenry County** (the "Sponsor").

WITNESSETH:

WHEREAS, DBI shall provide certain administrative services, activities or functions in connection with the Plan (the "Services") pursuant to a Services Agreement between DBI and the Sponsor (the "Services Agreement"); and

WHEREAS, the parties desire to enter into this Agreement as set forth below for the purpose of addressing the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act") enacted as part of the American Recovery and Reinvestment Act of 2009, and the regulations promulgated thereunder relating to the privacy and security of protected health information; the "Standards for Privacy of Individually Identifiable Health Information," 45 CFR Part 160 (specifically recognizing here 45 CFR Part 160, Subparts C, D, and E (the "Enforcement Rule")) and Part 164, Subparts A and E (the "Privacy Rule"); the "Standards for Electronic Transactions," 45 CFR Part 160, Subpart A, and Part 162, Subpart A and Subparts I through R (the "Electronic Transaction Rule"); the "Security Standards for the Protection of Electronic Protected Health Information," 45 CFR Part 160, Subpart A, and Part 164, Subparts A and C (the "Security Rule"); and the "Standards for Breach Notification for Unsecured Protected Health Information," 45 CFR Part 164, Subpart D (the "Breach Notification Rule"), as amended and clarified by the HIPAA Omnibus Rule or any regulations, rules or guidance that may be issued after the effective date of this Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Plan and DBI agree as follows:

Article I – Definitions

1.1 "Agent" shall have the meaning given to it in Section 2.5. As provided by HIPAA, an Agent and a Subcontractor are two separate types of arrangements.

1.2 "Breach" shall have the meaning given to it by 45 CFR § 164.402.

1.3 "Business Associate" shall have the meaning given to it by 45 CFR § 160.103.

1.4 "Designated Record Set" shall have the meaning given to it by 45 CFR § 164.501.

1.5 "Health Care Operations" shall have the same meaning given to it in 45 CFR § 164.501.

1.6 "HIPAA" shall mean, collectively, the Privacy Rule, the Electronic Transaction Rule, the Security Rule, and/or the Breach Notification Rule, each as amended and clarified by the HIPAA Omnibus Rule.

1.7 "HIPAA Omnibus Rule" shall mean the "Modifications to the HIPAA Privacy, Security, Enforcement and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act (the HITECH Act) and the Genetic Information Nondiscrimination Act (GINA)," 78 Federal Register 5566 (January 25, 2013).

1.8 "Individual" shall mean the person who is the subject of PHI and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

1.9 "Individual Rights Requests" shall mean Access Requests, Amendment Requests, Accounting Requests, and requests under Section 3.3.

1.10 "Payment" shall have the same meaning given to it in 45 CFR § 164.501.

1.11 "PHI" shall mean any information, whether oral or recorded in any form or medium, that – (i) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual; or the past, present

or future payment for the provision of health care to an Individual; and (ii) identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual.

1.12 "Plan" shall have the meaning provided as first written above. In all cases, the Plan shall mean the group health plan or plans of the Sponsor as set forth in 45 CFR § 160.103.

1.13 "Plan Administration Functions" shall have the same meaning given to it in 45 CFR § 164.504.

1.14 "Plan Administrator" shall mean the entity, individual, group or committee appointed by the Sponsor, or its successor or successors with the authority to administer the Plan.

1.15 "Privacy Official" shall mean the person designated by the Plan to serve as its privacy official within the meaning of 45 CFR § 164.530(a), and any person to whom the Privacy Official has delegated any of his or her duties or responsibilities.

1.16 "Protected Information" shall mean PHI received from the Plan or created, received, maintained or transmitted by DBI on behalf of the Plan.

1.17 "Required by Law" shall have the same meaning given to it in 45 CFR § 164.103.

1.18 "Secretary" shall mean the Secretary of the United States Department of Health and Human Services.

1.19 "Services" shall mean the activities, functions and/or services that DBI from time to time renders to or on behalf of the Plan to the extent that those activities, functions and/or services are covered by HIPAA.

1.20 "Subcontractor" shall have the same meaning given to it in 45 CFR § 160.103.

1.21 "Unsecured PHI" shall mean Protected Information that is not secured through the use of a technology or methodology that renders such Protected Information unusable, unreadable or indecipherable to unauthorized individuals as specified in 45 CFR § 164.402.

Article II – Obligations and Activities of DBI

2.1 Status of DBI. DBI acknowledges and agrees that it is a Business Associate of the Plan for purposes of the Privacy Rule.

2.2 Permitted Uses and Disclosures of Protected Information.

(a) Permitted Uses. DBI shall not use Protected Information other than as permitted by this Agreement. DBI may use Protected Information: (i) in connection with the performance, management and administration of the Services; (ii) for the proper business management and administration of DBI, (iii) to carry out DBI's legal responsibilities; (iv) to report violations of law consistent with 45 CFR § 164.502(j); (v) to the extent and for any purpose authorized by an Individual under 45 CFR §164.508; and (vi) for any purpose provided that no data is identifiable and has been de-identified pursuant to 45 CFR §164.514(b) (including the separate de-identification guidance issued by the Secretary on November 26, 2012). Notwithstanding the foregoing sentence, DBI shall not use Protected Information in any manner that violates the Privacy Rule, or that would violate the Privacy Rule if so used by the Plan (except for the purposes specified under 45 CFR § 164.504(e)(2)(i)(A) and (B)).

(b) Permitted Disclosures. DBI shall not disclose Protected Information other than as permitted by this Agreement. DBI may disclose Protected Information – (i) in connection with the performance, management and administration of the Services; (ii) to report violations of law consistent with 45 CFR § 164.502(j); (iii) to the extent and for any purpose authorized by an Individual under 45 CFR §164.508; and (iv) for any purpose provided that no data is identifiable and has been de-identified pursuant to 45 CFR §164.514(b) (including the separate de-identification guidance issued by the Secretary on November 26, 2012). In addition, DBI may also disclose Protected Information to a third party for the proper business management and administration of DBI and to carry out DBI's legal responsibilities; provided, that the disclosure is Required by Law, or DBI obtains, prior to the disclosure – (1) reasonable assurances from the third party that the Protected Information will be held confidentially and used or further disclosed only

COBRA Business Associate Agreement

as Required by Law or for the purpose for which it was disclosed to the third party, and (2) an agreement from the third party that the third party will notify DBI immediately of any instances in which it knows the confidentiality of the information has been breached. Further, DBI shall disclose, upon request, Protected Information to the Sponsor for Plan Administration Functions and to designated Sponsor employees (or designated Business Associates of the Plan) who are working for or on behalf of the Plan for purposes of Payment and Health Care Operations (including claims assistance activities) consistent with 45 CFR § 164.506(c)(1). Notwithstanding the foregoing, DBI shall not disclose Protected Information in any manner that violates the Privacy Rule, or that would violate the Privacy Rule if so disclosed by the Plan (except for the purposes specified under 45 CFR § 164.504(e)(2)(i)(A) and (B)).

(c) Minimum Necessary. To the extent required by the Privacy Rule, DBI shall only request, use and/or disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use and/or disclosure. For this purpose, the determination of what constitutes the minimum necessary amount of Protected Information shall be determined in accordance with Section 164.502(b) of the Privacy Rule.

(d) Direct Application of Privacy Rules. DBI shall not use and/or disclose Protected Information or provide any Services that require the use and/or disclosure of Protected Information unless such use and/or disclosure directly complies with this Section 2.2 and Sections 164.502(a)(3) and 164.504(e) of the Privacy Rule.

(e) GINA Provisions. Notwithstanding subsections (a) through (c) above, DBI shall not use and/or disclose Protected Information that is genetic information for underwriting purposes, as set forth in 45 CFR § 164.502(a)(5).

2.3 Safeguards. DBI shall maintain and use appropriate and commercially reasonable safeguards to prevent use and/or disclosure of Protected Information other than as permitted or required in this Agreement.

2.4 Reports of Prohibited Disclosures. If DBI becomes aware of a disclosure of an Individual's Protected Information by DBI and the disclosure violated the provisions of this Agreement, DBI must inform the Privacy Official regarding the prohibited disclosure of the Individual's Protected Information. To the extent that a disclosure described in this Section 2.4 also constitutes a Breach of Unsecured PHI, the provisions of this Section 2.4 shall not apply, but rather the provisions of Section 2.8 shall apply.

2.5 Agents and Subcontractors. DBI shall require each of its representatives, agents, and entities (collectively, "Agents") to whom DBI provides Protected Information on behalf of the Plan to agree to observe the restrictions on use and disclosure of the Protected Information imposed upon DBI by this Agreement and the Privacy Rule. In addition, DBI shall enter into a Business Associate Agreement with each of its Subcontractors which meets the requirements of the Privacy Rule, including the requirements set forth in 45 CFR § 164.504(e).

2.6 Access by Secretary. DBI shall make available to the Secretary DBI's internal practices, books and records (including its policies and procedures) relating to DBI's use and disclosure of Protected Information for the purpose of enabling the Secretary to assess the Plan's and/or DBI's compliance with HIPAA. DBI shall inform the Privacy Official of any request sent by the Secretary on behalf of the Plan that is received by DBI, unless it is prohibited by applicable law from doing so.

2.7 Mitigation. DBI agrees to mitigate, to the extent practicable, any harmful effect that is known to DBI of a use or disclosure of Protected Information by DBI in violation of the requirements of this Agreement.

2.8 Notice of Breach of Unsecured PHI.

(a) DBI Requirements. Upon DBI's discovery of a Breach of Unsecured PHI by DBI, DBI shall–

(1) Pursuant to the requirements set forth in subsection (b) below, provide written notice of the Breach, on behalf of the Plan, without unreasonable delay but no later than sixty (60) calendar days following the date the Breach is discovered or such later date as is authorized under 45 CFR § 164.412, to:

(i) each Individual whose Unsecured PHI has been, or is reasonably believed by DBI to have been, accessed, acquired, used or disclosed as a result of the Breach;

(ii) the media to the extent required under 45 CFR § 164.406; and

(iii) the Secretary to the extent required under 45 CFR § 164.408 (unless the Plan has elected to provide this notification and has informed DBI);

(2) Pursuant to the requirements set forth in subsection (c) below, provide written notice of the Breach to the Privacy Official, as soon as administratively practicable, but no later than three (3) business days after the Breach is discovered; and

(3) If the Breach involves less than 500 individuals, maintain a log or other documentation of the Breach which contains such information as would be required to be included if the log were maintained by the Plan pursuant to 45 CFR § 164.408, and provide such log to the Plan within five (5) business days of the Plan's written request.

(b) Notice Requirements. This subsection (b) provides the following special rules that shall each be applicable to the provisions of Section 2.8(a)(1)–

(1) The date that a Breach is discovered shall be determined by DBI, in its sole discretion, in accordance with the Breach Notification Rule.

(2) The content, form and delivery of each of the notices required by Section 2.8(a)(1) shall comply in all respects with the breach notification provisions applicable to the Plan, as set forth in the Breach Notification Rule.

(3) DBI shall send the notices described in Section 2.8(a)(1)(i) to each Individual using the address on file with DBI (or as may be otherwise provided by the Plan). If the notice to any Individual is returned as undeliverable, DBI shall make one additional attempt to deliver the notice to the Individual using such information as is reasonably available to it, or shall take other action required by the Breach Notification Rule.

(4) With respect to notices required under Section 2.8(a)(1)(i) and (ii), DBI and the Privacy Official shall cooperate in all respects regarding the drafting and the content of the notices. To that end, before sending any notice to any Individual or the media under Section 2.8(a)(1)(i) or (ii), DBI shall first provide a draft of the notice to the Privacy Official. The Privacy Official shall have five (5) business days (plus any reasonable extensions) to either approve DBI's draft of the notice or revise the language of the notice. Alternatively, the Privacy Official may elect to draft the notice for review by DBI. Once DBI and the Privacy Official agree on the final content of the notice, DBI shall send the notice to the Individuals and/or the media based on the requirements of the Breach Notification Rule.

(c) Privacy Official Notice. The notice to the Privacy Official pursuant to Section 2.8(a)(2) shall include the identity of each Individual whose Unsecured PHI was involved in the Breach and a brief description of the Breach. To the extent that DBI does not know the identities of all affected Individuals when it is required to notify the Privacy Official, DBI shall provide such information as soon as administratively practicable after such information becomes available. Upon the Plan's written request, DBI shall provide such additional information regarding the Breach as may be reasonably requested from time to time by the Plan.

(d) Services Agreement. DBI reserves the right to charge reasonable, cost based fees for sending the notices required by this Section 2.8 should a Breach be due to actions on the part of the Sponsor, the Plan or any other entity other than DBI, its Agents or Subcontractors.

Article III – Individual Rights Requirements

3.1 Designated Record Sets.

(a) General. DBI agrees to maintain a Designated Record Set for the Plan in a manner and form that will allow the Plan to provide access and amendment rights to an Individual with respect to the Individual's Protected Information in conformance with 45 CFR §§ 164.524 and 164.526.

(b) Access to Protected Information. Upon request from the Plan, DBI shall process and respond to a request by an Individual for access to an Individual's Protected Information that is maintained by DBI in a Designated Record Set pursuant to 45 CFR § 164.524 (an "Access Request"). DBI shall respond to such Access Request within the timeframes required by 45 CFR §

164.524 by furnishing such Protected Information to the Plan. If the Protected Information that is requested is maintained electronically and the Individual requests an electronic copy of such information, DBI will provide access to the information in an electronic format that complies with 45 CFR § 164.524(c)(2)(ii). Thereafter, the Plan will be responsible for sending such information to the Individual.

(c) Amendment to Protected Information. Upon request from the Plan, DBI shall process a request by an Individual for amendments to an Individual's Protected Information that is maintained by DBI in a Designated Record Set pursuant to 45 CFR § 164.526 (an "Amendment Request"). DBI shall process such Amendment Request within the timeframes required by 45 CFR § 164.526.

(d) Coordination with Privacy Official. DBI shall coordinate and cooperate with the Privacy Official (or any other person designated by the Plan Administrator for this purpose) regarding all processing, recordkeeping and documentation issues relating to Access Requests and Amendment Requests. Notwithstanding the foregoing, DBI shall not be obligated to coordinate with the Privacy Official if an Individual files an Access Request or an Amendment Request with DBI and such request is directed solely to DBI.

3.2 Accounting of Disclosures of Protected Information.

(a) Documentation of Disclosures. DBI agrees to document and maintain a log of any and all disclosures from and after the date or dates required by 45 CFR § 164.528 made by DBI of Protected Information in a manner and form that will allow the Plan to provide to an Individual an accounting of disclosures or other applicable report of the Individual's Protected Information in compliance with and based on the requirements of 45 CFR § 164.528.

(b) Accounting Requests. Upon request from the Plan, DBI shall process and respond to a request by an Individual for an accounting of disclosures or other applicable report of an Individual's Protected Information pursuant to the requirements of 45 CFR § 164.528 (an "Accounting Request"). DBI shall respond to such Accounting Request within the timeframes required by 45 CFR § 164.528 by furnishing such accounting to the Plan. Thereafter, the Plan will be responsible for sending such information to the Individual.

(c) Coordination with Privacy Official. DBI shall coordinate and cooperate with the Privacy Official (or any other person designated by the Plan Administrator for this purpose) regarding all processing, recordkeeping and documentation issues relating to Accounting Requests. Notwithstanding the foregoing, DBI shall not be obligated to coordinate with the Privacy Official if an Individual files an Accounting Request with DBI and such request is directed solely to DBI.

3.3 Privacy Protection Requests.

(a) Restriction Requests on Uses and Disclosures. The Plan and DBI on behalf of the Plan shall not agree to a restriction on the use or disclosure of Protected Information pursuant to 45 CFR § 164.522(a) without first consulting with the other party. DBI is not obligated to implement any restriction, if such restriction would hinder Health Care Operations or the Services DBI provides to the Plan, unless such restriction would otherwise be required by 45 CFR § 164.522(a).

(b) Confidential Communication Requests. DBI shall implement any reasonable requests by Individuals relating to a request to receive communications of Protected Information by alternative means or at alternative locations to the extent required by 45 CFR § 164.522(b).

(c) Coordination with Privacy Official. DBI shall coordinate and cooperate with the Privacy Official (or any other person designated by the Plan Administrator for this purpose) regarding all processing, recordkeeping and documentation issues relating to requests under this Section 3.3.

Article IV – Electronic Transaction Rule

4.1 Business Associate Requirements. DBI acknowledges that it is a Business Associate of the Plan for purposes of the Electronic Transaction Rule. DBI agrees that it shall comply with all Electronic Transaction Rule requirements that may be applicable to DBI with respect to the Services it provides to and on behalf of the Plan. DBI shall also require each of its Agents and Subcontractors

to whom DBI provides Protected Information that is received from, or created or received by DBI on behalf of the Plan to comply with the applicable requirements of the Electronic Transaction Rule.

4.2 Sponsor Transmissions. Electronic transmissions between DBI and the Sponsor are not required to comply with the Electronic Transaction Rule. Accordingly, the Sponsor hereby represents and warrants that all electronic transmissions with respect to the Plan between the Sponsor (either directly or through its designated agent) and DBI relating to enrollment and disenrollment information and premium payment information as each are covered by the Electronic Transaction Rule are sent or received by the Sponsor (either directly or through its designated agent) in the Sponsor's capacity as an employer and are not sent or received by the Plan.

Article V – Obligations of Plan

5.1 Privacy Notice. Upon request, the Plan will provide DBI with a copy of its notice of privacy practices pursuant to 45 CFR § 164.520.

5.2 Authorizations. The Plan will notify DBI of any changes in or revocations of Individual authorizations for use or disclosure of Protected Information to the extent that such changes or revocations may affect DBI's use or disclosure of Protected Information.

5.3 Officials. The Plan will notify DBI of the current name and contact information of the Plan Administrator, the Privacy Official and any other person that has the authority to act on behalf of the Plan with respect to the provisions contained in this Agreement.

5.4 Plan Amendments. Sponsor represents that it has amended its Plan documents to include specific provisions to restrict the use or disclosure of PHI and to ensure adequate procedural safeguards and accounting mechanisms for such uses or disclosures, in accordance with the Privacy Rule.

5.5 Additional Certification. The Plan represents and warrants that: (a) it has amended its plan documents, in accordance with 45 CFR § 164.504(f), so as to allow the Plan to receive Protected Information; (b) it has received a certification from the Sponsor in accordance with 45 CFR § 164.504(f)(2)(ii), and will provide a copy of such certification to DBI upon request; and (c) the plan document amendments permit the Plan to receive Protected Information (including detailed invoices, reports and statements from DBI); and (d) the Plan has determined, through its own policies and procedures and in compliance with 45 CFR § 164.502(b), that the Protected Information that it receives from DBI (including the detailed invoices, reports and statements) contains the minimum information necessary for the Plan to carry out its Payment and Health Care Operations activities.

Article VI – Amendment and Termination

6.1 Amendment. No change, modification, or attempted waiver of any of the provisions of this Agreement shall be binding upon any party hereto unless reduced to writing and signed by the party against whom enforcement is sought. DBI agrees to take such action as is necessary to amend this Agreement from time to time as the Plan reasonably determines necessary to comply with HIPAA, or any other applicable law, rule or regulation.

6.2 Term. The Term of this Agreement shall be effective on the date first written above (except as otherwise noted herein) and shall terminate when all of the Protected Information received from the Plan, or created or received by DBI on behalf of the Plan, is destroyed in accordance with the Plan's authorization or is returned to the Plan (or its designated agents) pursuant to Section 6.4.

6.3 Termination. If one party to this Agreement (the "Non-Breaching Party") has knowledge of a material violation of this Agreement by the other party to this Agreement (the "Breaching Party"), as determined in good faith by the Non-Breaching Party, the Non-Breaching Party must promptly:

(a) Provide an opportunity for the Breaching Party to end and to cure the material violation within a reasonable time specified by the Non-Breaching Party, and if the Breaching Party does not end and cure the material violation within such time (including reasonable extensions that the Non-Breaching Party determines are necessary) to the satisfaction of the Non-Breaching

COBRA Business Associate Agreement

Party, the Non-Breaching Party shall immediately terminate the Services rendered by DBI and any agreement or contract related thereto; or

(b) If a cure is not possible as determined by the Non-Breaching Party in its sole discretion, the Non-Breaching Party shall immediately terminate the Services rendered by DBI and any agreement or contract related thereto.

6.4 Effect of Termination. Upon termination pursuant to Section 6.3, the Plan within a reasonable time thereafter must inform DBI to either destroy or return to the Plan (or any agents designated by the Plan) the Protected Information that DBI and its Agents and Subcontractors maintain in any form, and DBI and its Agents and Subcontractors shall retain no copies of the Protected Information. However, in many situations DBI maintains one or more backup copies of Protected Information for auditing, data management and other related purposes and DBI has determined that destruction of all copies of Protected Information that it maintains is infeasible. Therefore, after termination of the Services and pursuant to 45 CFR § 164.504(e)(2)(ii)(J), this Agreement shall remain in effect and DBI shall continue to observe and shall ensure that its Agents and Subcontractors continue to observe its obligations under this Agreement to the extent copies of the Protected Information are retained by DBI and shall limit further uses and disclosures of Protected Information to the purposes that make its return or destruction infeasible and that are consistent with the Privacy Rule.

Article VII – Electronic Security Standards

7.1 Definitions. When used in this Article, the following terms shall have the meanings set forth as follows:

(a) "Electronic Media" shall have the meaning given to it in 45 CFR § 160.103.

(b) "Electronic Protected Information" shall mean Protected Information received from the Plan or created, received, maintained or transmitted by DBI on behalf of the Plan that is transmitted by Electronic Media or maintained in Electronic Media.

(c) "Security Incident" shall have the meaning given to it in 45 CFR § 164.304.

7.2 Requirements. Pursuant to 45 CFR § 164.314(a)(2)(i), DBI shall:

(a) Comply with the applicable requirements of the Security Rule, including the requirement that DBI implement, maintain and document administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Information to the extent required by the Security Rule;

(b) Report (pursuant to the terms and conditions of Section 7.3) to the Privacy Official (or such other person designated for this purpose) any Security Incident of which DBI becomes aware and which occurred during the applicable reporting period;

(c) Require each of its Agents to whom DBI provides Electronic Protected Information to agree to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Information that is provided to the agent to the extent required by the Security Rule; and

(d) Enter into a contract or other arrangement with each of its Subcontractors that create, receive, maintain or transmit Electronic Protected Information on behalf of DBI pursuant to which the Subcontractor agrees to comply with the applicable requirements of the Security Rule.

7.3 Reporting Protocols. All reports required by Section 7.2(b) shall be provided pursuant to the terms and conditions specified in this Section.

(a) Attempted Security Incidents. Reporting for any Security Incident involving the attempted unauthorized access, use, disclosure, modification or destruction of Electronic Protected Information (collectively, an "Attempted Security Incident") shall be provided pursuant to the standard reporting protocols of DBI (as determined by DBI).

(b) Successful Security Incident. Reporting for any Security Incident involving the successful unauthorized

access, use, disclosure, modification or destruction of Electronic Protected Information (collectively, a "Successful Security Incident") shall be provided to the Plan pursuant to the standard reporting protocols of DBI (as determined by DBI); provided, that (i) the reports shall at a minimum include the date of the incident, the parties involved (if known, including the names of Individuals affected), a description of the Successful Security Incident, a description of the Electronic Protected Information involved in the incident and any action taken to mitigate the impact of the Successful Security Incident and/or prevent its future recurrence and (ii) the reports shall satisfy the minimum requirements for Security Incident reporting that may be required from time to time by the Secretary. In addition, Successful Security Incidents shall be reported to the Plan as soon as administratively practicable after the occurrence of the incident taking into account the severity and nature of the incident. Notwithstanding the foregoing, the Plan may request details about one or more Successful Security Incidents, and DBI shall have thirty (30) days thereafter to furnish the requested information.

(c) Breach of Unsecured PHI. To the extent that a Security Incident described in this Section 7.3 also constitutes a Breach of Unsecured PHI, the provisions of this Section 7.3 shall not apply, but rather the provisions of Section 2.8 shall apply.

7.4 Mitigation. DBI agrees to mitigate, to the extent practicable, any harmful effect that is known to DBI relating to any Security Incident.

7.5 Access by Secretary. DBI shall make available to the Secretary DBI's internal practices, books and records (including its policies and procedures) relating to the safeguards established by DBI with respect to Electronic Protected Information for the purpose of enabling the Secretary to assess DBI and/or the Plan's compliance with the Security Rule. DBI shall inform the Privacy Official of any request sent by the Secretary on behalf of the Plan that is received by DBI, unless DBI is prevented by applicable law from doing so.

Article VIII – General

8.1 Other Agreements. The Plan and DBI acknowledge and affirm that this Agreement is in no way intended to address or cover all aspects of the relationship of the Plan and DBI and of the Services that are rendered by DBI to and on behalf of the Plan. Rather, this Agreement deals only with those matters that are specifically addressed herein. Further, this Agreement supersedes any prior business associate agreements entered into by DBI and the Plan (or any predecessor to the Plan), and shall apply to all Protected Information existing as of the effective date of this Agreement or created or received thereafter while this Agreement is in effect.

8.2 Indemnification. Any indemnification relating to violations of this Agreement by DBI or the Plan (or the Sponsor on behalf of the Plan) shall be addressed to the extent applicable by the Services Agreement.

8.3 Severability. The provisions of this Agreement shall be severable, and the invalidity or unenforceability of any provision (or part thereof) of this Agreement shall in no way affect the validity or enforceability of any other provisions (or remaining part thereof). If any part of any provision contained in this Agreement is determined by a court of competent jurisdiction, or by any administrative tribunal, to be invalid, illegal or incapable of being enforced, then the court or tribunal shall interpret such provisions in a manner so as to enforce them to the fullest extent of the law.

8.4 Interpretation. The provisions of this Agreement shall be interpreted in a manner intended to achieve compliance with HIPAA. Whenever the Agreement uses the term "including" followed by a specific item or items, or there is a passage having a similar effect, such passages of the Agreement shall be construed as if the phrase "without limitation" followed such term (or otherwise applied to such passage in a manner that avoids limitations on its breadth of application). Where the term "and/or" is used in this Agreement, the provision that includes the term shall have the meaning the provision would have if "and" replaced "and/or," but it shall also have the meaning the provision would have if "or" replaced "and/or." Any reference to a section or provision of HIPAA shall include any amendment or clarification of such section or provision contained in the HIPAA Omnibus Rule and any regulation, rule or guidance issued by the Secretary following the effective date of this Agreement.

8.5 Counterparts. Any number of counterparts of this Agreement may be signed and delivered, each of which shall be considered an original and all of which, together, shall constitute one and the same instrument.

8.6 Binding Effect. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, assigns and successors in interest. The Plan shall have the right to assign this Agreement to any successor or

surviving health plan, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by any such assignee.

8.7 No Third-Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, and nothing herein shall confer, upon any person other than the parties hereto any rights, remedies, obligations or liabilities whatsoever.

8.8 Applicable Law. The provisions of this Agreement shall be construed and administered to, and its validity and enforceability determined under HIPAA. To the extent that HIPAA is not applicable in a particular circumstance, the provisions of this Agreement shall be construed and administered to, and its validity and enforceability determined under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). In the event that HIPAA and ERISA do not preempt state law in a particular circumstance, the laws of the State of North Dakota shall govern.

8.9 State Privacy and Security Laws.

(a) General. Pursuant to 45 CFR § 160.203, DBI and the Plan acknowledge that HIPAA only preempts state laws which are contrary to a HIPAA standard, requirement or implementation specification, provided that state laws which relate to the privacy of Protected Information and are more stringent than the Privacy Rule are not preempted. Accordingly, the parties acknowledge that certain State Privacy Laws affecting the privacy and/or security of personally identifiable information (e.g., name, address, age, and social security number) relating to a Plan participant or beneficiary ("Privacy Restricted Data") may apply to the Services provided by DBI to the extent such State Privacy Laws are not preempted by HIPAA. For purposes of this Section 8.9, "State Privacy Laws" shall mean any applicable state and local privacy laws governing the creation, collection, storage, maintenance, access, modification, transmission, use or disclosure of Privacy Restricted Data.

(b) State Privacy Laws. All Privacy Restricted Data created, collected, received or obtained by or on behalf of DBI in the course of performing its Services shall be created, collected, received, obtained, stored, maintained, accessed, modified, transmitted, used and disclosed in accordance with any and all applicable State Privacy Laws. DBI shall at all times perform the Services in accordance with the State Privacy Laws and as not to cause the Sponsor or the Plan to be in violation of the State Privacy Laws. DBI shall be fully responsible for any creation, collection, receipt, access, storage, maintenance, modification, transmission, use and disclosure of Privacy Restricted Data performed by or on behalf of DBI that is in violation of any State Privacy Laws. DBI shall remedy and mitigate the damages of any breach of privacy, security, integrity or confidentiality with respect to the unauthorized creation, collection, receipt, storage, maintenance, access, modification, transmission, use or disclosure (a "State Breach") of Privacy Restricted Data that is or may be in violation of any State Privacy Laws.

(c) Notification. DBI shall notify the Privacy Official (using the procedures that apply to Breaches of Unsecured PHI under Section 2.8(c)) of any State Breaches by or on behalf of DBI of Privacy Restricted Data that is or may be in violation of any State Privacy Laws. In addition, DBI shall also notify the affected Plan participants and beneficiaries (using the procedures that apply to Breaches of Unsecured PHI under Section 2.8(b)) of any State Breaches by or on behalf of DBI of Privacy Restricted Data that is in violation of any State Privacy Laws and any state or local governmental agencies, authorities or other entities, but only to the extent required by such State Privacy Laws.

(d) HIPAA Coordination. The parties acknowledge that in certain situations the provisions of both Section 2.8 and this Section 8.9 shall apply. If both Sections 2.8 and 8.9 apply in a given situation, DBI shall comply with both Sections 2.8 and 8.9 to the extent applicable.

8.10 Obligation of Plan and DBI. To the extent that DBI carries out the HIPAA obligations of the Plan (including the obligations set forth in Section 2.8 and Article III), DBI shall comply with the applicable requirements of HIPAA as they apply to the Plan in the performance of such obligations on behalf of the Plan.

COBRA Business Associate Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officials on the date set forth above.

Signed for by the Sponsor on behalf of and as a representative of the Plan:

By: _____

Name: _____

Title: _____

Discovery Benefits, Inc.

By: _____

Name: Suzanne Rehr

Title: Chief Compliance Officer/EVP