

THIS CASE PROGRAM SERVICES AGREEMENT (the “Agreement”) is made and entered into by and between Transitions RBG, LLC, a Georgia limited liability company (“Transitions”) and [COMPANY NAME] (the “Company”) as of this ____ day of _____, 20___. Transitions and the Company may each be referred to herein as a “Party,” or may collectively be referred to as the “Parties.”

WHEREAS, Transitions is a licensed insurance agency which provides educational and consultative support to individuals who are seeking guidance concerning Medicare and retirement planning; and

WHEREAS, the Company desires to utilize certain of Transitions’ services and make such services available to its employees and other affiliated persons (such as spouses or other family members of employees);

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Transitions’ Responsibilities:

Transitions agrees to offer educational and consultative support to Company’s employees that are looking for guidance regarding Medicare, Social Security enrollment, and retirement planning (the “Services”). As soon as practical following the Effective Date of this Agreement and the completion of a “New Account Set-Up Form” by the Company, Transitions will schedule a formal call to discuss commencement of the Services and create a twelve (12)-month plan to maximize the effectiveness of the Services to be provided by Transitions. Services to be rendered by Transitions shall include:

- a. Providing support to Company’s employees with respect to off-boarding from Company’s employer group health plan(s);
- b. Consulting with Client’s employees regarding coordination of benefits, COBRA, pre-65 health insurance options, and post-65 health insurance options;
- c. Providing marketing outreach campaigns, including an initial marketing campaign and ongoing marketing services, each with details to be determined on an ongoing basis at the mutual agreement of the Company and Transitions;
- d. Consulting with Company regarding Medicare coordination of benefits and the Medicare Secondary Payer Rule;
- e. Facilitating touchpoint meetings with Company at mutually-agreeable intervals; and
- f. Providing program-related metrics reports to Company on a biannual basis.

In the event that additional Services are required by the Company beyond the general Services provided above, the Company and Transitions will enter into a separate Statement of Work (“SOW”), which shall be attached to this Agreement and shall incorporate the terms and conditions hereof. In the event that language in a SOW is inconsistent with the terms and conditions of this Agreement, the language of the SOW shall govern with respect

to items expressly within the scope of such SOW. As to items not expressly within the scope of the SOW, this Agreement shall govern.

2. Company's Responsibilities:

Company will engage with Transitions to maximize integration and education into Company's benefit package. Company's obligations in this regard shall include:

- a. As soon as practical, delivering an announcement to Company's employees regarding Transitions' services via email, using materials as templates to be provided to Company by Transitions;
- b. Providing data to Transitions regarding Company's employees throughout the term of the Agreement, including but not limited to employee name, email address, telephone number, and date of birth, with such information to be provided and used for the sole purpose of facilitating Transitions' delivery of Services pursuant to this Agreement, as further provided in the Business Associate Agreement between Transitions and the Company, which is incorporated herein as Appendix A.
- c. Providing payment to Transitions for the Services as set forth in Paragraph 3 hereof, and further described in the Program Schedule and Billing Terms, which is incorporated herein as Appendix B.

3. Compensation:

As more specifically set forth in Appendix B, the Company shall pay an implementation fee (the "Implementation Fee") and an annual recurring fee ("Annual Fee") to Transitions for the Services provided hereunder. The Implementation Fee will be due to Transitions immediately following the Effective Date of this Agreement, and no Services shall be performed prior to Company's payment of the Implementation Fee to Transitions. As more specifically set forth in Appendix B, the Annual Fee to be paid by the Company to Transitions shall be based upon the number of benefits-eligible employees that existed on the Effective Date of this Agreement. The Annual Fee shall be reassessed by Transitions upon each Renewal Term of this Agreement, in the event the number of benefits-eligible employees increases or decreases by more than 10% from that which existed at the beginning of the immediately prior Term.

Company shall be obligated to pay all Annual Fees to Transitions within thirty (30) days of receipt of an invoice from Transitions. Company may make all payments due hereunder by issuing a check or by electronic funds transfer.

4. Term of the Agreement and Termination

The initial term of this Agreement shall be for one (1) year from the Effective Date (the "Initial Term"), unless terminated earlier as provided herein. Upon expiration of the Initial Term, this Agreement shall automatically renew for one (1) year periods (each a "Renewal Term" and together with the Initial Term, the "Term").

At any time after the Initial Term, either Party may terminate on ninety (90) days' prior written notice to the other Party. At any time, during or after the Initial Term, the Parties may mutually agree to terminate the Agreement. In addition, either Party may terminate this Agreement, upon at least thirty (30) days' prior written notice, if the other Party is in material breach of its obligations hereunder and fails to cure its breach within such thirty (30) days of being notified of such material breach, or if the material breach is of a nature that cannot be cured. In

the event the Term expires before the term of any SOW executed pursuant to this Agreement, the Term shall be extended to the expiration date of such SOW.

5. Confidentiality

- a. Each of the Parties agrees that all information, knowledge, software, data, or records, whether written or otherwise, of whatsoever kind or nature not generally available to the public, including, but not limited to, any information which relates to clients' names, financial information or other information which is acquired or made available to the non-disclosing Party shall be regarded as strictly confidential and/or trade secrets of the disclosing Party. Each of the Parties agrees that it will not disclose in any way and will keep and maintain as confidential the terms and conditions of this Agreement except: (a) as reasonably necessary to comply with applicable laws or the rules and regulations of any governmental or administrative agency or self-regulating organization; (b) in response to a subpoena or order of a court of competent jurisdiction; or (c) as necessary to a Party's accountants, legal advisors or tax advisors who will be informed of the confidential nature of the information and who will agree to maintain such confidentiality. This provision shall not preclude the Parties from responding to any inquiry by any self-regulatory or governmental agency.
- b. Personal Health Information ("PHI") disclosed pursuant to this Agreement shall be governed by the terms of the Business Associate Agreement attached hereto as Appendix A and incorporated herein by reference.

6. Intellectual Property

Nothing herein shall create a license or right for either Party to use, display or publish the name, logo or trademark of the other in advertising, promotional materials or other documents or materials without the express written consent of the owner of such name, logo or trademark. Neither Party shall use the intellectual property of the other in such a manner as to state, suggest, imply or represent an endorsement of one Party by the other.

7. Representations and Warranties

The Parties represent or warrant as follows:

- a. Each Party individually represents and warrants that it has the right to enter into this Agreement and that the person signing this Agreement on its behalf and has been duly authorized to do so.
- b. Each Party individually represents and warrants that this Agreement and any attached Appendi(x/ces) SOW(s), Amendment(s), Addenda, and/or Exhibit(s) do not and will not conflict with any other agreement or obligation to which it is a Party.

8. Notices

Any notice required to be given hereunder shall be in writing and shall be served either by personal delivery, by certified mail, return receipt requested, Federal Express or other overnight delivery service that provides confirmation of receipt. Notices shall be addressed as follows:

If to Company: 

If to Transitions: Erica Reece
Transitions RBG, LLC
290 East Main Street
Canton, GA 30114

With a copy to:

Senior Market Sales LLC
Attn: Legal Department
8420 W. Dodge Rd., Ste. 510
Omaha, NE 68114

Either Party may notify the other of a more current or preferred mailing address by giving written notice of such change in accordance with this Section.

9. Indemnification

Each Party hereto will at all times indemnify, defend, and hold harmless the other Party, its parent, directors, officers, shareholders, affiliates, employees, agents, successors and permitted assigns from and against any and all claims, demands, causes of action, damages, liabilities, costs and expenses (collectively "Claims" or individually "Claim") including, without limitation, fees and disbursements of counsel incurred by the indemnified Party in any action or proceeding between the indemnified Party and any third party to the extent that it is based upon a Claim that: (i) if true, would constitute a breach of any of the indemnifying Party's representations, warranties or confidentiality obligations hereunder or any Schedule(s), Exhibit(s), Addenda, and/or Amendment(s) hereto; (ii) arises out of the gross negligence or willful misconduct of the indemnifying Party. In claiming any indemnification hereunder, the Party claiming indemnification (the "Claimant") will provide the other Party with written notice of any Claim which the Claimant believes falls within the scope of the indemnification to be provided pursuant to this Section. The Claimant may, at its own expense, assist in the defense if it so chooses, provided that the indemnifying Party shall be entitled to control such defense and all negotiations and to bind the Claimant; provided, however, that the indemnifying Party shall not be entitled to settle a Claim against the Claimant without the Claimant's written consent.

10. Limitation of Liability

NO CONSEQUENTIAL DAMAGES. TO THE MAXIMUM EXTENT A LIMITATION OF DAMAGES OR LIABILITY IS PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING FOR THE INDIRECT LOSS OF PROFIT OR REVENUE) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED, AND UNDER WHATEVER CAUSE OF ACTION OR THEORY OF LIABILITY BROUGHT (INCLUDING UNDER ANY CONTRACT, NEGLIGENCE OR OTHER TORT THEORY OF LIABILITY) EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Arbitration

In the event of a dispute regarding the enforcement or interpretation of this Agreement, the Parties hereby agree to resolve the dispute through mandatory binding arbitration under the appropriate rules of the American Arbitration Association. Either Party may initiate arbitration by serving a demand for arbitration (the "Demand") upon the other Party. The arbitration proceeding shall be conducted in Cherokee County, Georgia. The findings and award of the arbitrator shall be governed by applicable Georgia state and federal law, shall be binding upon the Parties and shall replace the Parties' right to a court trial. The Parties shall equally share the cost for conducting the arbitration, including the arbitrator's fees. However, the prevailing Party in the arbitration may be entitled to reimbursement for its costs, including reasonable attorney's fees and expert witness fees, incurred in connection with the arbitration proceeding and any such award of costs and fees shall be made at the discretion of the arbitrator.

12. Assignment

Neither Party may assign its rights or responsibilities under this Agreement to any third party without the prior written consent of the other Party to this Agreement, nor shall any such unauthorized assignment be valid.

13. Successors

This Agreement shall be binding upon and shall inure to the benefit of the respective heirs, successors, personal representatives, successors and assigns of the Parties. No Party shall delegate its duties, obligations, benefits or rights hereunder without the written consent of the other Party.

14. Relationship of the Parties

Nothing in this Agreement shall be construed or interpreted to create a joint venture, partnership, principal-agent or employer-employee relationship between the Parties. Each Party shall at all times act and perform its obligations hereunder as an independent contractor of the other Party. Unless otherwise agreed to herein, neither Party shall have the authority to bind the other or represent to third parties that it has the right to bind the other to any contract, debt or other obligation.

15. Governing Law

The Parties agree that this Agreement shall be governed by, and interpreted according to, the laws of the State of Georgia, without regard for conflicts of laws rules.

16. Compliance with Applicable Law

The Parties hereto shall comply with all applicable state and federal laws as well as any applicable regulatory agency rules and regulations as related to activities contemplated under this Agreement.

17. Severability

The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision of this Agreement. Without limitation to the foregoing, if any term or provision of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, such

term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and the agreements of the Parties.

18. Entire Agreement

This Agreement and all Exhibit(s), Schedule(s), and Amendment(s) attached hereto or subsequently executed by the Parties shall constitute the entire Agreement between the Parties, and supersede any prior agreements between the Parties with respect to the subject matter hereof. There are no understandings between the Parties other than as expressed in this Agreement.

19. Survival

Sections 5, 6, 7, 9, 10,11, 13, 14, 15, 17, 18, 20, 21, 23 and 24 shall survive the termination of this Agreement.

20. Waiver

No delay or failure to exercise any right or remedy by either Party for any default by the other, and no custom or practice of the Parties at variance with the terms of this Agreement, shall impair any right or remedy otherwise available to a Party or be construed as a waiver of any such right or remedy. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision. Neither Party shall be construed to have waived any of its rights or remedies under this Agreement unless such waiver is in writing and properly executed by the Party.

21. Rights Cumulative

The rights, remedies and powers of each of the Parties contained in this Agreement are cumulative and not exclusive of any other rights, remedies or powers provided to the Parties herein or by applicable law. No single or partial exercise by either of the Parties hereto of any right, remedy or power under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

22. Amendment

This Agreement and any Exhibit(s), and Schedule(s) hereto may be amended at any time by mutual written agreement of the Parties; provided, however, that such amendment will not affect any part of this Agreement and/or any Exhibit(s) or Schedule(s) hereto that is not specifically addressed by said Amendment.

23. Headings

Headings, as used in this Agreement, are for convenience and ease of reference only and shall not be considered in interpreting the terms and conditions of this Agreement.

24. Execution

This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one instrument. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.

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

[COMPANY]

Transitions RBG, LLC

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX A
Business Associate Agreement

THIS BUSINESS ASSOCIATE AGREEMENT (“BAA”) amends and is made a part of all Services Agreements (as defined below) between [Company Name] (“Company”) and Transitions RBG, LLC (“Transitions”). This BAA is effective as of the Effective Date set forth in the Services Agreements (“Effective Date”). Transitions and the Company may each be referred to herein as a “Party,” or may collectively be referred to as the “Parties.”

WHEREAS, Company is a party to agreement(s) pursuant to which Company provides services to one or more Covered Entities;

WHEREAS, Company and Transitions are Parties to one or more Services Agreements pursuant to which Transitions provides services, as defined in the Services Agreement(s), to Company, and in connection with the provision of the services, certain Protected Health Information (“PHI” as defined in 45 C.F.R.§164.501) that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) may be disclosed to Transitions;

WHEREAS, Company, as a recipient of PHI from one or more Covered Entities is a Business Associate as that term is defined in the Privacy Rule and the Security Rule;

WHEREAS, pursuant to the Privacy Rule and the Security Rule, all Business Associates of Covered Entities must agree in writing to certain mandatory provisions regarding the Use and Disclosure of PHI, including a provision requiring contractors or agents to whom the Business Associate provides PHI to agree to the same conditions and restrictions that apply to the Business Associate;

NOW, THEREFORE in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. **Definitions.**

a. **Catch-all definition.** The following terms used in this BAA shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclose or Disclosure, Electronic Protected Health Information, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information or PHI, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use. Other capitalized terms used but not otherwise defined in this BAA shall have the meaning ascribed in the HIPAA Rules.

b. **Specific definitions.**

(1) **“Business Associate”** shall generally have the same meaning as the term “Business Associate” at 45 CFR 160.103, and in reference to the party to this BAA, shall mean the party identified above as Business Associate.

(2) **“Business Associate Functions”** means all functions performed by Transitions under one or more Services Agreements on behalf of Company which involve the creation, receipt, maintenance or transmission of PHI by Transitions or its agents or Subcontractors on behalf of Company.

- (3) "**Covered Entity**" shall generally have the same meaning as the term "Covered Entity" at 45 CFR 160.103.
- (4) "**HIPAA Rules**" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164. A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended at the time the section is to be applied.
- (5) "**Services Agreements**" means all agreements whether now in effect or hereafter entered into, between the Company and Transitions for the performance of Business Associate Functions by Transitions.

2. Purpose

The HIPAA Rules require Company to obtain, and Transitions to provide, satisfactory written contractual assurances before Transitions may create, receive, maintain, or disclose PHI to perform Business Associate Functions. This BAA is entered into to provide the contractual assurances required under the HIPAA Rules.

3. Obligations of Transitions

As an express condition of performing Business Associate Functions, Transitions agrees to:

- a. Not Use or Disclose PHI other than as permitted or required by this BAA or as otherwise Required by Law.
- b. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information, to prevent Use or Disclosure of PHI other than as provided for in this BAA.
- c. Report to Company's designated privacy official, without unreasonable delay but in no event more than three (3) business days after discovery by Transitions, any Use or Disclosure of PHI not provided for by this BAA of which Transitions becomes aware, including any Breach of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware, together with any remedial or mitigating action taken or proposed to be taken with respect thereto. If Transitions does not have available complete information in satisfaction of 45 CFR 164.410(c) within three (3) business days of discovery of the impermissible Use or Disclosure, Transitions shall provide all information it has at such time, and immediately update Company with additional information as it becomes available through prompt investigation. This BAA serves as Transitions' notice to Company that attempted but unsuccessful Security Incidents regularly occur and that no further notice will be made by Transitions unless there has been a successful Security Incident or attempts or patterns of attempts that Transitions determines to be suspicious.

Transitions shall cooperate with Company in mitigating any harmful effects of any impermissible Use or Disclosure. In the case of a Breach as determined to exist in the sole discretion of Company which was due to a violation of this BAA by Transitions, Transitions shall pay for the reasonable costs of investigation, mitigation and notification to affected Individuals.

- d. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Transitions agree in writing to the same restrictions, conditions, and requirements that apply to Transitions with respect to such information.

- e. Within five (5) business days of request by an Individual or notification by Company, make available to Company the Individual's PHI maintained by Transitions in a Designated Record Set in accordance with 45 CFR 164.524. If the requested PHI is maintained in one or more Designated Record Sets electronically and if the Individual requests an electronic copy of such PHI, Transitions must provide Company with access to the PHI in the electronic form and format requested by the Individual, if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to between Company and the Individual and within the technical capability of Transitions. Transitions is not authorized to independently respond to an Individual's request and shall refer all Individuals to Company to make any such request.
- f. Notify Company within five (5) business days of any request by an Individual to amend PHI maintained by Transitions in a Designated Record Set, direct the requesting Individual to Company for handling of such request, and promptly incorporate any amendment accepted by Company and communicated to Transitions in accordance with 45 CFR 164.526. Transitions is not authorized to independently agree to any amendment of PHI and shall direct all Individuals to Company to make any such request.
- g. Maintain a record of those Disclosures of PHI by Transitions or its agents or Subcontractors which are subject to the Individual's right to an accounting under 45 CFR 164.528 and within five (5) business days of notification by Company report such Disclosures to Company in a form permitting Company to respond to an Individual's request for an accounting. Transitions is not authorized to independently respond to an Individual's request and shall direct all Individuals to Company to make any such a request.
- h. Make its internal practices, books and records relating to this BAA available to the Secretary of HHS and to Company for purposes of determining Company's and Transitions' compliance with the HIPAA Rules.
- i. Comply with any restriction on Use or Disclosure of PHI under 45 CFR 164.522(a) of the HIPAA Rules when accepted by Company and communicated to Transitions. Transitions shall direct Individuals to Company to make any such request.
- j. Comply with any reasonable requests by Individuals under 45 CFR 164.522(b) to receive communications of PHI by alternative means or at alternate locations when accepted by Company and communicated to Transitions. Transitions shall direct Individuals to Company to make any such request.
- k. Limit the Uses and Disclosures of, or requests for, PHI for purposes described in this BAA to the Minimum Necessary to perform the required Business Associate Function. Transitions shall comply with any additional requirements for the determination of Minimum Necessary as are required from time to time by the HIPAA Rules, as amended, or through additional guidance published by the Secretary.
- l. To the extent Transitions is expressly obligated under the Services Agreements to carry out one or more of Company's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Company in the performance of such obligation(s).
- m. Except for the specific Uses and Disclosures for the Transitions' own management and administration or to carry out the legal responsibilities of Transitions, Transitions shall not Use or Disclose PHI in a manner that would violate the HIPAA Rules if done by Company.

4. Permitted Uses and Disclosures of PHI

Transitions shall only Use or Disclose PHI as follows:

- a. Transitions may Use or Disclose PHI as Required by Law.
- b. Transitions may Use or Disclose PHI as necessary to carry out Business Associate Functions.
- c. Transitions may Use PHI for the proper management and administration of Transitions or to carry out the legal responsibilities of Transitions.
- d. Transitions may Disclose PHI for the proper management and administration of Transitions or to carry out the legal responsibilities of Transitions, provided the Disclosures are Required by Law, or Transitions obtains reasonable assurances from the person to whom the information is Disclosed that the information will remain confidential and be Used or further Disclosed only as Required by Law or for the purposes for which it was Disclosed to the person, and the person notifies Transitions in writing of any instances of which it is aware in which the confidentiality of the information has been breached or compromised.
- e. If specifically identified as a Business Associate Function in the Services Agreements, Transitions may provide Data Aggregation services relating to the Health Care Operations of Company.
- f. If de-identification is listed as a Business Associate Function in the Services Agreements, or if Transitions is expressly permitted to de-identify PHI and use data thus de-identified for its own uses in the Services Agreements, Transitions may Use PHI to de-identify the information in accordance with 45 CFR 164.514(a)-(c). Transitions may use de-identified data only for the purposes specified in the Services Agreements.

5. Responsibilities of Company

Company agrees to:

- a. Notify Transitions promptly of any restriction on the Use or Disclosure of PHI that Company has agreed to or is required to abide by under 45 CFR 164.522, to the extent such restriction may affect Transitions' Use or Disclosure of PHI.
- b. Notify Transitions of any changes in, or revocation of, the permission by an Individual to Use or Disclose PHI, to the extent that such changes may affect Transitions' Use or Disclosure of PHI.
- c. Provide Transitions with a copy of any amendment to PHI which is accepted by Company under 45 CFR 164.526 which Company believes will apply to PHI maintained by Transitions in a Designated Record Set.
- d. Not request Transitions to Use or Disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Company, with exception for any Data Aggregation services permitted under Section 4.

6. Compliance with Security Rule

- a. Transitions shall comply with the HIPAA Security Rule, which shall mean the Standards for Security of Electronic Protected Health Information at 45 C.F.R. Part 160 and Subparts A and C of Part 164, as amended

by ARRA and the HITECH Act. The term “ePHI” as used in this BAA shall mean an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

b. In accordance with the Security Rule, Transitions agrees to:

- (1) Implement the administrative safeguards set forth at 45 C.F.R. § 164.308, the physical safeguards set forth at 45 C.F.R. § 164.310, the technical safeguards set forth at 45 C.F.R. § 164.312, and the policies and procedures set forth at 45 C.F.R. § 164.316, to reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it creates, receives, maintains, or transmits on behalf of Company as required by the Security Rule. Transitions acknowledges that, effective on the Effective Date of this BAA, (a) the foregoing safeguards, policies, and procedures requirements shall apply to Transitions in the same manner that such requirements apply to Company, and (b) Transitions shall be liable under the civil and criminal enforcement provisions set forth at 42 U.S.C. § 1320d-5 and 1320d-6, as amended from time to time, for failure to comply with the safeguards, policies, and procedures requirements and any guidance issued by the Secretary from time to time with respect to such requirements;
- (2) Require that any agent, including a Subcontractor, to whom it provides such PHI agrees to implement reasonable and appropriate safeguards to protect the PHI; and
- (3) Report to Company any Security Incident of which it becomes aware.

7. Supervening Law

Upon the enactment of any law or regulation affecting the Use or Disclosure of PHI, or the publication of any decision of a court of the United States or of this state relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, the Parties agree to amend this BAA in such manner as is necessary to comply with such law or regulation. If the Parties are unable to agree on an amendment within thirty (30) days, either Party may terminate the Services Agreements on not less than thirty (30) days' written notice to the other.

8. Liability and Indemnification

Each Party shall be responsible for the acts and omissions of its own agents, employees and contractors. Notwithstanding the foregoing, and notwithstanding any limitation of liability or disclaimer of damages in the Services Agreements or elsewhere, to the extent that the Secretary determines that Transitions is acting as an agent of Company under the Services Agreements or this BAA, Transitions shall indemnify Company for any fines, civil monetary penalties or monetary resolutions incurred by Company, plus reasonable attorneys' fees of Company, arising out of or relating to the actions or omissions of Transitions which constitute a breach of this BAA by Transitions.

9. Term and Termination

- a. **Term.** This BAA shall become effective on the Effective Date and shall continue in effect until all obligations of the parties have been met, including return or destruction of all PHI in Transitions' possession (or in the possession of Transitions' agents and Subcontractors), unless sooner terminated as provided herein. It is

expressly agreed that the terms and conditions of this BAA designed to safeguard PHI shall survive expiration or other termination of the Services Agreements and shall continue in effect until Transitions has performed all obligations under this BAA and has either returned or destroyed all PHI.

b. Termination.

Company may immediately terminate this BAA and the Services Agreements, if Company makes the determination that Transitions has breached a material term of this BAA. Alternatively, Company may choose to provide Transitions with written notice of the existence of an alleged material breach, and afford Transitions an opportunity to cure the alleged material breach upon mutually agreeable terms. Failure to take reasonable steps to cure the breach is grounds for the immediate termination of this BAA.

c. Transitions Obligations Upon Termination. Upon termination of this BAA for any reason, Transitions, with respect to PHI received from Company, or created, maintained, or received by Transitions on behalf of Company, shall:

- (1) Retain only that PHI which is necessary for Transitions to continue its proper management and administration or to carry out its legal responsibilities or as to which Transitions reasonably determines such PHI is technically incapable of being returned or destroyed;
- (2) Return to Company or, if not provided for in the Services Agreements, destroy the PHI not retained pursuant to Section 8.c.(i) that the Transitions maintains in any form;
- (3) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information retained by Transitions to prevent Use or Disclosure of the PHI, other than as provided for in this Section, for as long as Transitions retains the PHI;
- (4) Not Use or Disclose the PHI retained by Transitions other than for the purposes for which such PHI was retained and subject to the same conditions set out at Sections 4.c. and 4.d. which applied prior to termination; and
- (5) Return to Company or, if not provided for in the Services Agreements, destroy the PHI retained by Transitions pursuant to Section 8.c.(i) when it is no longer needed by Transitions for its proper management and administration or to carry out its legal responsibilities, except where Transitions reasonably determines such PHI is not technically capable of being returned or destroyed.

10. Miscellaneous

- a. **Company.** For purposes of this BAA, and as applicable to the Business Associate Functions of Transitions under the Services Agreements covered by this BAA, references to Company shall include the named Company and all other covered entities named in and covered by the Services Agreements.
- b. **Survival.** The respective rights and obligations of Transitions and Company hereunder shall survive termination of this BAA according to the terms hereof and the obligations imposed on Company and Transitions under the HIPAA Rules.

- c. **Interpretation; Amendment.** This BAA shall be interpreted and applied in a manner consistent with Company's and Transitions' obligations under the HIPAA Rules. All amendments shall be in writing and signed by both parties, except that this BAA shall attach to additional Services Agreements entered into between the parties in the future without the necessity of amending this BAA each time. This BAA is intended to cover the entire Business Associate *relationship* between the Parties, as amended, from time to time, through Services Agreements or other means.
- d. **Waiver.** A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.
- e. **Severability.** The invalidity or unenforceability of any provisions of this BAA shall not affect the validity or enforceability of any other provision of this BAA.
- f. **No Third-Party Beneficiaries.** Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies or obligations.
- g. **Counterparts.** This BAA 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.

IN WITNESS WHEREOF, each of the undersigned has caused this BAA to be duly executed in its name and on its behalf.

[Company Name]

Transitions RBG, LLC

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

APPENDIX B
Program Schedule and Billing

Recurring Annual Fee:

Rates based on Company employee count:

- Over 500 employees: \$ 0.50 Per employee per month
- Under 500 employees: \$ 250 / monthly

Number of Company employees: _____

Fees per month: _____

 x 12 months

Annual Fee: _____

Implementation Fee: \$1500

Total Due Prior to Provision of Services:

- Implementation Fee: \$ _____
- Initial Monthly Fee: \$ _____
- **Total Due:** \$ _____