

Business Associate Agreement

This Business Associate Agreement (“Agreement”), effective _____ (“Business Associate Agreement Effective Date”), is entered into by and between BMO Harris Bank N.A. (“Business Associate”) and the City of Manitowoc Flexible Benefits Plan (“Covered Entity”) collectively, (“the Parties”). This Agreement amends and is incorporated by reference into the most current signed Administrative Services Agreement (“Services Agreement”) between the Covered Entity and Business Associate.

I. Definitions

Unless otherwise defined, terms used in this Agreement have the same meaning as those terms in the Standards for Privacy of Individually Identifiable Health Information or the HIPAA Security Standards (“HIPAA Privacy & Security Rules”), found at 45 CFR Parts 160-164.

II. Privacy and Security of Protected Health Information

1. **Permitted Uses and Disclosures.** Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the HIPAA Privacy & Security Rules if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
2. **Business Associate’s Operations.** Business Associate may use or disclose Protected Health Information for its proper management and administration or to carry out its legal responsibilities, provided that, with respect to disclosure of Protected Health Information, either the disclosure is Required by Law; or
 - a. **Business Associate obtains reasonable assurance from any person or entity to which Business Associate will disclose Protected Health Information that the person or entity will:**
 - i. Hold Protected Health Information in confidence and use or further disclose Protected Health Information only for the purpose for which Business Associate disclosed Protected Health Information to the person or entity or as Required by Law; and
 - ii. Promptly notify Business Associate of any instance of which the person or entity becomes aware in which the confidentiality of Protected Health Information was breached.
3. **Data Aggregation & De-Identification.** Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity or to de-identify Protected Health Information. Once information is de-identified this Business Associate Agreement shall not apply
4. **Information Safeguards.**
 - a. **Privacy of Covered Entity’s Protected Health Information.** Business Associate will use appropriate safeguards to protect the privacy of Protected Health Information. To the extent the parties agree that the Business Associate will carry out directly one or more of Covered Entity's obligations under the Privacy Rule, the Business Associate will comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligations.
 - b. **Security of Covered Entity’s Electronic Protected Health Information.** Business Associate will comply with the Security Rule and will use appropriate administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on Covered Entity’s behalf.
5. **Subcontractors.** Business Associate will require each of its subcontractors to agree to comply with the HIPAA Privacy & Security Rules with respect to Protected Health Information created, received, maintained, or transmitted on behalf of the Business Associate and to apply the same restrictions and conditions that apply to the Business Associate with respect to such Protected Health Information.

III. Individual Rights

1. **Access.** Business Associate will make available to Covered Entity (or, at Covered Entity’s written direction, to an individual or the individual's designee) for inspection and copying of Protected Health Information about the individual that is in a Designated Record Set in Business Associate’s custody or control, so that Covered Entity may meet its access obligations under 45 CFR Section 164.524. If Covered Entity requests an electronic copy of Protected Health Information that is maintained electronically in a Designated Record Set in the Business Associate’s custody or control, Business Associate will provide an electronic copy in the form and format specified by the Covered Entity if it is readily producible in such format; if it is not readily producible in such format, Business Associate will work with Covered Entity to determine an alternative form and format that enable Covered Entity to meet its electronic access obligations under 45 CFR Section 164.524.

2. **Amendment.** Business Associate will, upon receipt of written notice from Covered Entity, amend or permit Covered Entity access to amend any portion of Protected Health Information that is in a Designated Record Set in the custody or control of the Business Associate, so that Covered Entity may meet its amendment obligations under 45 CFR Section 164.526.
3. **Disclosure Accounting.** Business Associate agrees to document and provide a description of any disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to meet its obligations to account for disclosures of Protected Health Information under 45 CFR Section 164.528.
4. **Restriction Agreements and Confidential Communications.** Covered Entity shall notify Business Associate of any limitations in the notice of privacy practices of Covered Entity under 45 CFR Section 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information in accordance with 45 CFR 164.522. Covered Entity shall be responsible for promptly notifying Business Associate in writing of the termination of any such restriction or confidential communications requirement and, with respect to termination of any such restriction, instruct Business Associate whether any of Protected Health Information will remain subject to the terms of the restriction agreement.

IV. Breaches and Security Incidents

1. **Reporting.**
 - a. **Impermissible Use or Disclosure.** Business Associate will report to Covered Entity any use or disclosure of Protected Health Information not permitted by this Agreement of which it becomes aware.
 - b. **Breach of Covered Entity's Unsecured Protected Health Information.** Business Associate will report to Covered Entity any Breach of Unsecured Protected Health Information as soon as practicable, but not more than 60 calendar days after discovery of such Breach. Business Associate's report will include at least the following, provided that absence of any information will not be cause for Business Associate to delay the report:
 - i. The nature of the Breach, which will include a brief description of what happened, including the date of any Breach and the date of the discovery of any Breach;
 - ii. The types of Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, or other information were involved);
 - iii. What corrective or investigational action Business Associate (or Subcontractor) has taken or will take to prevent further non-permitted uses or disclosures, to mitigate harmful effects, and to protect against any further Breaches;
 - iv. What steps the individuals who were subject to a Breach should take to protect themselves;
 - v. If requested by Covered Entity, Business Associate shall notify the individuals involved, or the media, or the US Department of Health and Human Services, as applicable, in accordance with the HIPAA Privacy & Security Rules. For purposes of this provision, Business Associate is considered an independent contractor of Covered Entity.
2. **Security Incident.** Business Associate will report to Covered Entity any Security Incident of which Business Associate becomes aware.
3. **Mitigation.** Business Associate shall mitigate, to the extent practicable, any harmful effect known to the Business Associate resulting from a use or disclosure by Business Associate in violation of this Agreement.

V. Term and Termination

1. **Right to Terminate for Cause.** Covered Entity may terminate this Agreement if it determines that Business Associate has breached any provision of this Agreement, and after written notice to Business Associate of the breach, Business Associate has failed to cure the breach within 60 calendar days after receipt of the notice.
2. **Treatment of Protected Health Information on Termination.**
 - a. **Return or Destruction of Covered Entity's Protected Health Information as Feasible.** Upon termination of the Services Agreement, Business Associate will destroy or return to Covered Entity any Protected Health Information it holds in any form. This provision also applies to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. If Business Associate reasonably can show that it is infeasible to return or destroy Protected Health Information, Business Associate must extend the protections under this Agreement to such Protected Health Information and only may further use or disclose such information for those purposes that make the return or destruction infeasible.
 - b. **Continuing Privacy and Security Obligation.** Business Associate's obligation to protect the privacy and safeguard the security of Covered Entity's Protected Health Information as specified in this Agreement will be continuous and survive termination or other conclusion of this Agreement.

VI. General Provisions

1. **Amendment to Agreement.** Upon the compliance date of any final regulation or amendment to final regulation promulgated by HHS that affects Business Associate or Covered Entity's obligations under this Agreement, this Agreement will automatically amend such that the obligations imposed on Business Associate or Covered Entity remain in compliance with the final regulation or amendment to final regulation.
2. **Entire Agreement.** This Agreement along with the incorporated Services Agreement constitute the entire agreement between the parties with respect to its subject matter and constitutes and supersedes all prior agreements, representations and understandings of the parties, written or oral, with regard to this same subject matter.
3. **Inspection of Internal Practices, Books, and Records.** Business Associate will make its internal practices, books, and records relating to its use and disclosure of Protected Health Information available to HHS to determine compliance with the HIPAA Privacy & Security Rules.
4. **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity and Business Associate to comply with the applicable requirements under the HIPAA Rules.
5. **No Third-Party Beneficiaries.** Nothing in this Agreement shall be construed as creating any rights or benefits to any third parties.
6. **Notices.** Any notices or reports given hereunder shall be delivered to named Privacy Officials/Contacts. Current Privacy Officials/Contacts are identified on the attached "Addendum". The Parties shall provide prompt written notification of any change of Privacy Official/Contact.
7. **Severability.** The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.
8. **Claim Information.** Notwithstanding anything to the contrary in this Agreement, all claim information will be destroyed seven (7) years after the claim has been filed.
9. **Relationship of Parties.** The parties intend that Business Associate is an independent contractor and not an agent of Covered Entity for purposes of this Agreement.

City of Manitowoc, Wisconsin

and on behalf of

City of Manitowoc Flexible Benefits Plan, Covered Entity

Dated: _____

By: _____

By: _____

Title: _____

Title: _____

BMO Harris Bank N.A.,

Business Associate:

Dated: _____

By: _____

Title: _____

BMO Retirement Services is a part of BMO Global Asset Management and a division of the BMO Harris Bank N.A., offering products and services through various affiliates of BMO Financial Group.

BMO Global Asset Management is the brand name for various affiliated entities of BMO Financial Group that provide investment management, retirement, and trust and custody services. Certain of the products and services offered under the brand name BMO Global Asset Management are designed specifically for various categories of investors in a number of different countries and regions and may not be available to all investors. Those products and services are only offered to such investors in those countries and regions in accordance with applicable laws and regulations. BMO Financial Group is a service mark of Bank of Montreal (BMO). Investment products are: **NOT FDIC INSURED — NO BANK GUARANTEE — MAY LOSE VALUE.**

Business Associate Agreement Addendum

This document is an addendum to and is incorporated into the existing Business Associate Agreement entered into between BMO Harris Bank, N.A. (“Business Associate”) and the City of Manitowoc Flexible Benefits Plan (“Covered Entity”). The purpose of this addendum is to identify:

- 1) Privacy Officials of the Covered Entity and Contacts of the Business Associate;
- 2) Covered Entity personnel authorized to access or transmit information for plan administration purposes; and,
- 3) Other business associates of the Covered Entity authorized to access or transmit information for plan administration purposes.

NAMED PRIVACY OFFICIAL/CONTACTS(S)

Business Associate: Ms. Sheila Vetrone
Vice President
BMO Harris Bank, N.A.
Benefit Services
221 West College Avenue
Appleton, WI 54911
Sheila.Vetrone@bmo.com
800-236-3539

Covered Entity: (Name)
(Title)
(Company)
(Street)
(City, State, Zip)
(Email)
(Telephone)

COVERED ENTITY PERSONNEL AUTHORIZED TO ACCESS OR TRANSMIT INFORMATION FOR PLAN ADMINISTRATION PURPOSES

, (Title); , (Name)
, (Title); , (Name)
, (Title); , (Name)
, (Title); , (Name)

-or-

(Detailed description of employees (e.g. by department) authorized access to PHI for plan administration purposes.)

OTHER BUSINESS ASSOCIATES OF THE COVERED ENTITY AUTHORIZED TO ACCESS OR TRANSMIT INFORMATION FOR PLAN ADMINISTRATION PURPOSES.

List all other business associates authorized to receive information from or to transmit information to BMO Harris Bank N.A., Benefit Services Department.

, (Company); , (Department); , (Title); , (Name);
Have you entered into a Business Associate Agreement with this provider?

, (Company); , (Department); , (Title); , (Name);
Have you entered into a Business Associate Agreement with this provider?

, (Company); , (Department); , (Title); , (Name);
Have you entered into a Business Associate Agreement with this provider?

City of Manitowoc, Wisconsin

and on behalf of
City of Manitowoc Flexible Benefits Plan, Covered Entity

Dated: _____

By: _____

By: _____

Title: _____

Title: _____

BMO Harris Bank N.A.

Business Associate:

Dated: _____

By: _____

Title: _____

BMO Retirement Services is a part of BMO Global Asset Management and a division of the BMO Harris Bank N.A., offering products and services through various affiliates of BMO Financial Group.

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