



EBS-RMSCO, Inc.
Employee Benefit Solutions

Encl. #11.17
January 31, 2013

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585 421-4400 | 585 421-4450 fax

www.ebsrmsco.com

December 28, 2012

PRIVATE & CONFIDENTIAL

Dr. Ralph Marino, Jr.
Superintendent of Schools & Acting School Business Administrator
Horseheads Central School District
One Raider Lane
Horseheads, New York 14845

Re: Medicare Part D Actuarial Equivalence Testing – Horseheads Central School District

Dear Ralph,

This letter describes our understanding of the assistance EBS-RMSCO will provide to the Horseheads Central School District (the "District") in relation to the actuarial attestation required under the Medicare Modernization Act for the July 1, 2013 – June 30, 2014 plan year.

BACKGROUND

The District provides prescription drug benefits for approximately 490 retirees and spouses as part of an integrated medical benefit. The following summarizes the prescription benefit plan tested for the 2012-2013 plan year. ***If any of the benefit options have changed or if benefit options have been added, please notify EBS-RMSCO of corrections before we begin the testing process.***

<i>Benefit Option Name</i>	<i>UBOI</i>	<i>Prescription Design</i>
BCBS Wraparound	14370-02	\$2 copay \$0 deductible
BCBS Option H	502005-004	\$0 / \$10 / \$15 copay \$0 deductible

In order to receive the above coverage, Retirees pay from 0% to 100% of the premium for their coverage. ***The District will provide a list of plan participants and the percentage each pays for retiree prescription coverage.***

Retirees may not purchase medical coverage without prescription coverage.

PROJECT SCOPE

EBS-RMSCO will calculate the Gross Test for the creditable coverage notice and the Net Test. EBS will supply documentation of our results for purposes of complying with

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requirements for the 28% Retiree Drug Subsidy ("RDS"), based on the current regulations published by the Center for Medicare and Medicaid Services ("CMS").

EBS-RMSCO will complete Part III of the RDS application only; the rest of the application will be completed by the District or its designees. CMS' User_Guide can be found online at: http://rds.cms.hhs.gov/user_guide/.

EBS-RMSCO acknowledges that the results of this project will be used to obtain Federal funds. EBS-RMSCO will agree to maintain and make available to CMS reports, working documents, and other records as required under 42 C.F.R. 423.888(d).

We have attached a data request form indicating the information we require in order to proceed with the testing. *We prefer to work with de-identified participant data in order to avoid HIPAA confidentiality issues. If de-identified data cannot be provided, then a Business Associate confidentiality agreement is attached which will need to be executed and returned.* You should confirm with your claims processors that they will be able to provide the additional data necessary to complete the RDS application.

PROFESSIONAL ARRANGEMENTS

Based on the plan design described above and the Medicare regulations, we estimate that our fee for completing the actuarial attestation for the District will be \$3,500. These fees are based on the project scope and terms of the plan as summarized in this letter. The fees also assume that complete and accurate data will be readily available in a useable electronic format.

As the engagement progresses, should any aspects of the project scope change affecting this fee, we will discuss it with you before proceeding with the work. There will be additional charges for any work requested which is outside the scope of this letter.

LIABILITY AND INDEMNIFICATION

The District is engaging EBS-RMSCO to provide actuarial, consulting and administrative services as described in this letter. EBS-RMSCO is not acting as Plan Administrator, as defined under ERISA, or in any other fiduciary capacity. EBS-RMSCO shall rely on documents, data and other information provided to EBS-RMSCO by the District, its employees, accountants, attorneys, professional advisors, other District representatives, and Plan fiduciaries, without being required to investigate or verify the accuracy of such documents, data and information.

The District hereby agrees that EBS-RMSCO shall not be liable for, and the District shall indemnify and hold EBS-RMSCO, its directors, officers, agents, employees and assigns,

and affiliates harmless against, any and all losses, damages, penalties, liabilities, costs, and expenses, including without limitation, reasonable attorneys' fees and disbursements (hereinafter collectively referred to as "liability"), arising from this agreement, EBS-RMSCO's services, or any action taken or omitted in connection herewith, except any liability resulting from EBS-RMSCO's own negligence or willful misconduct, including, but not limited, to any liability arising from:

- errors, omissions, negligence or willful misconduct by the District, its employees, accountants, attorneys, professional advisors, other District representatives, or Plan fiduciaries;
- any action taken or omitted in compliance with instructions from the District, its employees, accountants, attorneys, professional advisors, other District representatives, or Plan fiduciaries;
- EBS-RMSCO's reliance on documents, data or other information provided to it by the District, its employees, accountants, attorneys, professional advisors, other District representatives, or Plan fiduciaries;
- any failure to timely provide EBS-RMSCO with any documents, data or other information that EBS-RMSCO requests and requires to perform services on a timely basis;
- any services rendered, and any errors and omissions, by any Plan service provider, before or after EBS-RMSCO's engagement by the District, including, but not limited to, any failure to file reports or forms with government agencies or any errors on any reports or forms that were filed or
- any dispute between the District, another Plan service provider or a Plan participant or beneficiary.

Furthermore, in no event will EBS-RMSCO be liable for any special, incidental, indirect, consequential or punitive damages, including without limitation any damages claimed as a result of loss of profits or revenue.

In the event that EBS-RMSCO does not receive payment for services, EBS-RMSCO will be under no obligation to complete the work described in this letter or provide services in the future. In the event that EBS-RMSCO's services are terminated, EBS-RMSCO will be under no obligation to maintain documents and data related to its services hereunder for more than one year following the termination of services. EBS-RMSCO will prepare and transfer data and files related to its services hereunder to the District or another Plan service provider designated by the District only if specifically requested to do so by the District and after notifying the District of EBS-RMSCO's additional fee for preparation and transfer of the data and files.

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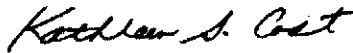
The liability provisions and District's indemnification obligations above will survive the termination of this letter agreement.

If the terms of the engagement set forth in this letter are acceptable to the District, please sign this letter on the lines indicated below and return a copy to me. The receipt of participant data from the District will be interpreted as approval of these terms even in the absence of a signed fee letter.

The RDS filing due date is April 1, 2013. Please provide EBS-RMSCO with the necessary data by March 1, 2013 in order to ensure timely completion.

We appreciate the opportunity to continue to provide actuarial services to the District. Please feel free to contact me at (585) 421-4424 if you have any questions.

Sincerely,



Kathleen S. Cost, ASA, MAAA
Associate Actuary

Accepted by:

Name

Date

DATA REQUIREMENTS

Please supply us with the following information. If not all the requested data is available, please supply as much as possible.

1. Medicare-eligible members - data for current year

- Unique identifier (*preferably not Social Security Number; we prefer to work with de-identified participant data in order to avoid potential privacy issues under HIPAA*)
- Gender
- Date of Birth or Age
- Amount of 2012 annual premium paid for by retiree/spouse
- Code indicating participant type (e.g., retiree or spouse)
- 2011 Gross Rx Claims by participant excluding administrative charges, discounts, rebates or other cost-reductions
- Deductible paid by participant included in the Gross Rx Claims above
- Co-pays paid by participant included in Gross Rx Claims above
- Other co-insurance paid by participant included in Gross Rx Claims above

2. Copies of all current written material describing these benefits including, but not limited to: letters, memoranda, bargaining agreements, employee notices, summary descriptions, insurance contracts, etc.

The preferred data format is an Excel spreadsheet. However, we can accommodate a variety of formats including ASCII (fixed column width or delimited), Lotus, Dbase, Access, and other commercial database packages.

The Gross Rx Claims should be for Medicare Part D covered drugs only as defined under Section 423.100 of the regulations as follows:

1. A drug that may be dispensed only upon a prescription and that is described in Sections 1927(k)(2)(A)(i) through (iii) of the Medicare Modernization Act (the "Act").
2. A biological product described in Sections 1927(k)(2)(B)(i) through (iii) of the Act.
3. Insulin described in Section 1927(k)(2)(C) of the Act.
4. Medical supplies associated with the injection of insulin, including syringes, needles, alcohol swabs and gauze.
5. a vaccine licensed under Section 351 of the Public Health Service Act.

The Gross Rx Claims should not include:

1. Drugs for which payment as so prescribed and dispensed or administered to an individual is available for that individual under Medicare Part A or Part B (even though a deductible may apply or even though the individual is eligible for coverage under Medicare Part A or Part B but has declined to enroll in Medicare Part A or Part B).
2. Drugs or classes of drugs or their medical uses which may be excluded from coverage or otherwise restricted under Medicaid under Sections 1927(4)(d)(2) or (d)(3) of the Act except for smoking cessation agents.
3. Diabetic supplies (e.g., glucose monitors, lancets)



BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement, effective upon execution, is between EBS-RMSCO, Inc. ("EBS-RMSCO") and Horseheads Central School District (the "Employer").

Employer and EBS-RMSCO are parties to one or more agreements pursuant to which EBS-RMSCO has agreed to provide certain services on Employer's behalf ("Agreement"). Employer is the Plan sponsor of the Horseheads Central School District Retiree Prescription Drug Plan (the "Plan"), and EBS-RMSCO is a Business Associate of the Plan.

Employer (for itself and on behalf of the Plan) and EBS-RMSCO execute this Business Associate Agreement to comply with 45 Code of Federal Regulations ("C.F.R.") Parts 160-64 for the Administrative Simplification provisions of Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and the requirements of the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), and regulations and other guidance issued to date by the Department of Health and Human Services ("DHHS") at 45 CFR Parts 160-64, applicable to Business Associates. Employer and EBS-RMSCO agree to incorporate into this Business Associate Agreement any regulations issued with respect to the HITECH Act that relate to the obligations of business associates.

1. Privacy of Protected Health Information.

- (a) **Prohibition on Unauthorized Use and Disclosure.** EBS-RMSCO will use, disclose and request Protected Health Information ("PHI") relating to any individual previously, currently, or who in the future may be, covered by the Plan, only:
 - (i) as permitted or required by the Agreement, this Business Associate Agreement or as Required by Law; and
 - (ii) in a manner that would not violate 45 CFR Part 164, Subpart E - Privacy of Individually Identifiable Health Information (the "Privacy Rule") or the HITECH Act if such use or disclosure was by the Plan, except as set forth in Section 1(b)(ii) below.
- (b) **Permitted Uses and Disclosures.** EBS-RMSCO is permitted to use, disclose and request PHI, only as follows:
 - (i) to perform the functions, activities, services and operations specified in the Agreement dated December 28, 2012, consistent with the Privacy Rule and HITECH Act: and

- (ii) for EBS-RMSCO's proper management and administration, to provide Data Aggregation services, or to carry out EBS-RMSCO's legal responsibilities, provided that with respect to any such disclosure described in this Section 1(b):
 - A) such disclosure is Required by Law; or
 - B) EBS-RMSCO obtains reasonable assurance from any person or entity to which it will disclose PHI that the person or entity will:
 - 1) hold such PHI in confidence and use or further disclose such PHI only for the purpose for which EBS-RMSCO disclosed it to the person or entity, or as Required by Law; and
 - 2) promptly notify EBS-RMSCO (who will in turn notify the Plan in accordance with Section 5(a) of this Business Associate Agreement) of any instance of which the person or entity becomes aware in which the confidentiality of such PHI was breached.
- (c) Minimum Necessary and Limited Data Set. Any use, disclosure or request of PHI by EBS-RMSCO will utilize a Limited Data Set if practicable. Otherwise, EBS-RMSCO will, in its performance of the functions, activities, services, and operations specified in Section 1(b) above, make reasonable efforts to use, disclose, and request only the minimum amount of PHI reasonably necessary to accomplish the intended purpose of the use, disclosure or request, except that EBS-RMSCO will not be obligated to comply with this minimum necessary limitation with respect to a:
 - (i) disclosure to, or request by, a health care provider for Treatment;
 - (ii) use for or disclosure to an individual who is the subject of such PHI, or that individual's personal representative, as permitted or required under 45 CFR §164.502(a)(2)(i);
 - (iii) use or disclosure made pursuant to an authorization compliant with 45 CFR §164.508 and signed by an individual who is the subject of the PHI to be used or disclosed, or by that individual's personal representative;
 - (iv) disclosure to the DHHS in accordance with Section 3(a) of this Business Associate Agreement;
 - (v) use or disclosure Required by Law;
 - (vi) use or disclosure required for compliance with 45 CFR Part 164, Subchapter C; or

- (vii) use or disclosure otherwise excepted from the minimum necessary limitation as specified in 45 CFR §164.502(b)(2).

(d) Information Safeguards.

- (i) EBS-RMSCO will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect PHI. The safeguards must reasonably protect PHI from any intentional or unintentional use or disclosure in violation of the Privacy Rule, HITECH Act or this Business Associate Agreement, and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Business Associate Agreement.
- (ii) EBS-RMSCO will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI that EBS-RMSCO creates, receives, maintains, or transmits on behalf of the Plan, as required by 45 CFR Part 164, Subpart C - Security Standards for the Protection of Electronic Protected Health Information (the "Security Rule") and the HITECH Act. EBS-RMSCO also will develop and implement policies and procedures satisfying the HITECH Act, including Security Rule documentation requirements.
- (iii) EBS-RMSCO will mitigate, to the extent practicable, any harmful effect that is known to EBS-RMSCO of a use or disclosure of PHI in violation of this Business Associate Agreement.

- (e) Subcontractors and Agents. EBS-RMSCO will require any of its subcontractors and agents, to which EBS-RMSCO is permitted to disclose PHI consistent with this Business Associate Agreement, to provide reasonable assurance that such subcontractor or agent will comply with the same privacy and security safeguard obligations with respect to such PHI that are applicable to EBS-RMSCO under this Business Associate Agreement.

2. Compliance with Transaction Standards. If EBS-RMSCO conducts, in whole or part, electronic Transactions on behalf of the Plan for which DHHS has established Standards, EBS-RMSCO will comply, and will require any subcontractor or agent it involves with the conduct of such Transactions to comply, with each applicable requirement of the transaction rules in 45 CFR Parts 160 and 162. EBS-RMSCO will not enter into, or permit its subcontractors or agents to enter into, any Trading Partner Agreement in connection with the conduct of Standard Transactions on behalf of the Plan that:

- (a) changes the definition, data condition, or use of a data element or segment in a Standard Transaction;
- (b) adds any data element or segment to the maximum defined data set;

- (c) uses any code or data element that is marked “not used” in the Standard Transaction’s implementation specification or is not in the Standard Transaction’s implementation specification; or
- (d) changes the meaning or intent of the Standard Transaction’s implementation specification.

3. Access to PHI and EBS-RMSCO’s Records; Amendment and Accounting of Disclosures.

- (a) EBS-RMSCO will make its internal practices, books, and records relating to its use and disclosure of PHI available upon request to the Plan and to DHHS to determine the Plan’s compliance with the Privacy Rule, Security Rule and the HITECH Act.
- (b) EBS-RMSCO will, within thirty (30) days following the Plan’s request, make available to the Plan PHI which is in EBS-RMSCO’s possession or custody or control and is held in a Designated Record Set (or, at the Plan’s direction, to the individual who is the subject of the PHI or that individual’s personal representative) for the purpose of inspecting and/or obtaining such PHI, so that the Plan may meet its access obligations under 45 CFR §164.524 and, where applicable, the HITECH Act. When directed by the Plan, EBS-RMSCO will make such information available in an electronic format.
- (c) EBS-RMSCO will, upon receipt of written notice from the Plan, promptly amend PHI in its possession or control that is held in a Designated Record Set, or permit access to such PHI, so that the Plan may meet its PHI amendment obligations under 45 CFR §164.526.
- (d) So that the Plan may meet its disclosure accounting obligations under 45 CFR §164.528:
 - (i) EBS-RMSCO will record the information specified in Section 3(d)(iii) below (“Disclosure Information”) for each disclosure of PHI that is not excepted from disclosure accounting, as specified in Section 3(d)(ii) below.
 - (ii) EBS-RMSCO will not be obligated to record Disclosure Information or otherwise account for disclosures of PHI:
 - A) that occurred before the date the disclosure accounting requirements under 45 CFR §164.528 applied to the Plan;
 - B) for Treatment, Payment or Health Care Operations activities (except when and where such recording or accounting is required by the HITECH Act);
 - C) of an individual to that individual or to the individual’s personal representative;

- D) pursuant to an authorization compliant with 45 CFR §164.508 signed by an individual who is the subject of the PHI disclosed or by that individual's personal representative;
 - E) for the facility's directory or to persons involved in the care or payment related to the care of the individual who is the subject of the PHI, or other notification purposes, as provided in 45 CFR §164.510;
 - F) to law enforcement officials or correctional institutions, in accordance with 45 CFR §164.512(k)(5);
 - G) for national security or intelligence purposes, in accordance with 45 CFR §164.512(k)(2);
 - H) as part of a Limited Data Set, in accordance with 45 CFR §164.514(e);
 - I) incident to a use or disclosure that EBS-RMSCO is otherwise permitted or required to make under the Privacy Rule (as provided in 45 CFR §164.502), the HITECH Act and this Business Associate Agreement; or
 - J) otherwise excepted from disclosure accounting, as specified in 45 CFR §164.528.
- (iii) With respect to any disclosure by EBS-RMSCO of PHI that is not excepted from disclosure accounting by Section 3(d)(ii) above, EBS-RMSCO will record the following Disclosure Information as applicable to the type of disclosure made:
- A) Except when EBS-RMSCO has made multiple disclosures of PHI as described in Section 3(d)(iii)(B) below and for disclosures for large Research studies as specified in Section 3(d)(iii)(C) below, EBS-RMSCO will record for each disclosure: (i) the disclosure date; (ii) the name and (if known) address of the entity to which EBS-RMSCO made the disclosure; (iii) a brief description of PHI disclosed; and (iv) a brief statement of the purpose of the disclosure. EBS-RMSCO will also provide any additional information to the extent required by the HITECH Act or regulations issued thereunder.
 - B) If EBS-RMSCO has made multiple disclosures of PHI during the period covered by the accounting to the same person or entity for a single purpose under 45 CFR §164.502(a)(2)(ii) or 45 CFR §164.512 (including Employer), EBS-RMSCO will record either the Disclosure Information specified in Section 3(d)(iii)(A) above for each disclosure, or: (i) the Disclosure Information specified in Section 3(d)(iii)(A) above for the first such disclosure; (ii) the

frequency, periodicity, or number of such disclosures; and (iii) the date of the last such disclosure.

- C) For disclosures of PHI made for particular Research involving 50 or more individuals and for which an institutional review board or privacy board has waived authorization during the period covered by an individual's disclosure accounting request, EBS-RMSCO will record: (i) the name of the Research protocol or activity; (ii) a plain language description of the Research protocol or activity, including its purpose and criteria for selecting particular records; (iii) a brief description of the type of PHI disclosed; (iv) the dates or periods during which EBS-RMSCO made or may have made these disclosures, including the date of the last disclosure that EBS-RMSCO made during the period covered by the accounting; (v) the name, address, and telephone number of the Research sponsor and of the researcher to whom EBS-RMSCO made these disclosures; and (vi) a statement that PHI relating to an individual requesting the disclosure accounting may or may not have been disclosed for a particular Research protocol or activity. EBS-RMSCO will, upon request of the Plan or an individual requesting the disclosure accounting, assist the Plan or the individual in contacting the Research sponsor and the researcher if it is reasonably likely that PHI relating to the individual was disclosed for the particular Research protocol or activity.

- (iv) Unless otherwise provided under federal law, EBS-RMSCO will maintain the Disclosure Information for at least 6 years following the date of the disclosure to which the Disclosure Information relates. EBS-RMSCO will make the Disclosure Information available to the Plan within thirty (30) days following the Plan's request for such Disclosure Information to comply with an individual's request for disclosure accounting. In addition, when EBS-RMSCO is contacted directly by an individual based on information provided to the individual by the Plan and where so required by federal law or regulations, EBS-RMSCO will make such Disclosure Information available directly to the individual.

- 4. Restriction Agreements and Confidential Communications. EBS-RMSCO will comply with any provision in the Plan's notice of privacy practices restricting the use or disclosure of PHI, and with any agreement made by or on behalf of the Plan that restricts the use or disclosure of PHI pursuant to 45 CFR §164.522(a) or requires confidential communication about PHI pursuant to 45 CFR §164.522(b), to the extent EBS-RMSCO's use or disclosure of PHI may be affected by such restriction or confidential communication obligation; provided Employer or the Plan notifies EBS-RMSCO in writing of such restriction or confidential communication requirement. Employer or the Plan will promptly notify EBS-RMSCO in writing of any change to, or the termination of, any such restriction or confidential communication requirement and, in the case of termination of such a restriction, will instruct EBS-RMSCO whether any PHI remains subject to the restriction.

5. Privacy Breaches and Security Incidents.

(a) Reporting.

- (i) As required under the HITECH Act, upon discovery of any use or disclosure of PHI not permitted by this Business Associate Agreement, or of any "Breach" of "Unsecured PHI" (as these terms are defined by the HITECH Act and regulations issued thereunder), EBS-RMSCO will report such use, disclosure or Breach to the Plan without unreasonable delay, but in no event later than ten (10) days following discovery. EBS-RMSCO will cooperate with the Plan in investigating any Breach and in meeting the Plan's obligations under the HITECH Act and any other security breach notification laws.
- (ii) To the extent the following information is known to EBS-RMSCO, the report will:
 - A) identify the nature of the non-permitted access, use or disclosure, including the date of the Breach and the date of discovery of the Breach;
 - B) identify each individual whose Unsecured PHI has been, or is reasonably believed by EBS-RMSCO to have been, accessed, acquired, or disclosed during such Breach;
 - C) identify PHI accessed, used or disclosed as part of the Breach (e.g., full name, social security number, date of birth, etc.);
 - D) identify who made the non-permitted access, use or disclosure and who received the non-permitted disclosure;
 - E) identify what corrective action EBS-RMSCO took or will take to prevent further non-permitted uses or disclosures;
 - F) identify what EBS-RMSCO did or will do to mitigate any deleterious effect of the non-permitted access, use or disclosure; and
 - G) contain such other information as the Plan may reasonably request or may be required by HIPAA, the HITECH Act or regulations issued thereunder.
- (iii) Upon discovery of any attempted or successful unauthorized access, use, disclosure, modification, or destruction of Electronic PHI, or interference with EBS-RMSCO's system operations in EBS-RMSCO's information systems, EBS-RMSCO will report such incident to the Plan without unreasonable delay, but in no event later than ten (10) days following discovery. If such incident resulted in any use or disclosure of PHI not permitted by this Business Associate Agreement, or of any Breach of

Unsecured PHI (as described Section 5(a)(i) above), such report will contain the information described in Section 5(a)(ii) above to the extent known to EBS-RMSCO.

6. Disclosure of PHI to Employer. Employer makes the following representations to EBS-RMSCO:

- (a) Plan sponsor. Employer is the Plan sponsor.
- (b) Plan document. The Plan document has been amended to:
 - (i) permit disclosure of PHI and Electronic PHI to Employer (as Plan sponsor) only upon receipt of the certification required for such disclosure under 45 CFR §164.504(f)(2)(i);
 - (ii) establish the permitted and required uses and disclosures of PHI by Employer (as Plan sponsor), which shall include only Payment activities and Health Care Operations that Employer performs for the Plan, as required under 45 CFR §164.504(f)(2)(ii);
 - (iii) provide for adequate separation between employees of Employer who will have access to PHI to perform the Plan administrative functions described in Section 6(b)(ii) above and all other employees of Employer, as required under 45 CFR §164.504(f)(2)(iii);
 - (iv) require Employer to implement the safeguards, and satisfy all other requirements, under 45 CFR §164.314(b) with respect to any Electronic PHI that Employer receives; and
 - (v) contain all other provisions necessary to comply with Privacy Rule, Security Rule and HITECH Act, and to permit EBS-RMSCO to disclose PHI to Employer.
- (c) Certification and Adequate Separation. Employer:
 - (i) has provided the Plan with the certification described in Section 6(b)(i) above;
 - (ii) will use and disclose PHI it receives from EBS-RMSCO only to perform the Plan administrative functions described in Section 6(b)(ii) above;
 - (iii) has implemented procedures to provide for adequate separation between employees of Employer who have access to PHI received from EBS-RMSCO to perform the Plan administrative functions described in Section 6(b)(ii) above and all other employees of Employer;
 - (iv) has safeguards in place, and satisfies all other requirements described in Section 6(b)(iv) above, with respect to any Electronic PHI it receives from EBS-RMSCO; and

- (v) will timely amend the Plan document, and take all other action necessary, to comply with changes under the Privacy Rule, Security Rule or the HITECH Act which are necessary to permit EBS-RMSCO to disclose PHI to Employer consistent with this Business Associate Agreement.
- (d) Other Representations.
 - (i) Employer will notify EBS-RMSCO immediately if any of its representations in this Section 6 are no longer true.
 - (ii) Employer will not request PHI from EBS-RMSCO, or request EBS-RMSCO to use or disclose PHI, in any manner not permitted under the Plan document, the Plan's notice of privacy practices, the Privacy Rule or HITECH Act.
- (e) Termination of Employer's Access to PHI. Notwithstanding any other provision of the Agreement or this Business Associate Agreement, upon notification by Employer or upon otherwise discovering that any of Employer's representations above are not true, EBS-RMSCO may immediately terminate Plan Sponsor's access to PHI; provided, however, such termination will not apply to:
 - (i) health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual, and meets the de-identification requirements of 45 CFR §164.514(a);
 - (ii) information on whether an individual is participating in the Plan or is enrolled or has disenrolled from a health insurer or health maintenance organization offered by the Plan;
 - (iii) Summary Health Information requested by Employer either to obtain premium bids from health plans for providing health insurance coverage under the Plan or to modify, amend or terminate the Plan; and
 - (iv) disclosure of PHI pursuant to an authorization compliant with 45 CFR §164.508 and signed by an individual who is the subject of the PHI to be disclosed, or by that individual's personal representative, for the purpose(s) identified in such authorization.
- (f) Minimum Necessary Disclosure. Except in the case of disclosure of PHI to Employer pursuant to authorization described in Section 6(e)(iv) above, EBS-RMSCO will make reasonable efforts to insure that the amount of PHI disclosed to Employer in accordance with this Section will be the minimum amount necessary to accomplish the intended purpose, as required, but subject to the exceptions provided, under 45 CFR §164.502(b).

7. Indemnification Obligations.

- (a) Indemnification. Each party to this Business Associate Agreement (“Indemnifying Party”) hereby agrees to indemnify and hold harmless the other Party (“Indemnified Party”) and each of its affiliated companies, and all directors, trustees, officers, agents, and employees of each of the foregoing, from and against any and all demands, damages, liabilities, and losses, or any pending or completed actions, claims, suits, complaints, proceedings, or investigations (including reasonable attorneys fees and other expenses of litigation or arbitration, judgments, fines or amounts paid in any settlement consented to by the Indemnifying Party) to which any of them may be or become subject to as a result or arising out of: (a) the Indemnifying Party’s violation of the Privacy Rule, Security Rule or the HITECH Act; or (b) the Indemnifying Party’s breach of this Business Associate Agreement or any misrepresentation by the Indemnifying Party in this Business Associate Agreement.
- (b) Notice and Right to Control Resolution. If any action, suit, proceeding, or investigation is initiated, or any claim or demand is made, against any Indemnified Party with respect to which the Indemnified Party may make a claim against the Indemnifying Party pursuant to this Section, then the Indemnified Party will give prompt written notice of such action, suit, proceeding, investigation, claim or demand to the Indemnifying Party. The Indemnified Party’s failure to provide such notice will not reduce the obligations hereunder of the Indemnifying Party unless the Indemnifying Party suffers material prejudice. Thereafter, the Indemnifying Party will have the opportunity, at its own expense and with its own counsel, to defend or settle such action, suit, proceeding, investigation, claim or demand; provided, however, that: (a) the Indemnifying Party will keep the Indemnified Party informed of all material developments and events relating to such action, suit, proceeding, investigation, claim or demand; (b) the Indemnified Party will have the right to participate, at its own expense in the defense of such action, suit, proceeding, investigation, claim or demand and will cooperate as reasonably requested by the Indemnifying Party in the defense thereof; and (c) the Indemnifying Party will not settle such action, suit, proceeding, investigation, claim or demand without the prior written consent of the Indemnified Party, which consent will not be unreasonably withheld, provided however that the prior written consent of the Indemnified Party is not required if the settlement will result in a complete and final release from all liability.

8. Termination of the Agreement.

- (a) Upon Breach by EBS-RMSCO. Employer or the Plan may terminate the Agreement if EBS-RMSCO breaches any material provision of this Business Associate Agreement and, upon written notice to EBS-RMSCO of such breach, EBS-RMSCO fails to cure the breach within sixty (60) days after receipt of the notice. Employer or the Plan may exercise this right to terminate the Agreement by providing EBS-RMSCO written notice of termination, stating the failure to cure the breach that provides the basis for the termination. Any such termination will be effective immediately or at such other date specified in the notice of termination. Notwithstanding the above, if such breach is not cured within sixty

(60) days after EBS-RMSCO receives notice of the breach and termination of the Agreement is not feasible, Employer or the Plan may report such breach to the U.S. Department of Health and Human Services.

- (b) Upon Breach by Employer or Plan. EBS-RMSCO may terminate the Agreement if Employer or the Plan materially breaches any material provision of this Business Associate Agreement (or if EBS-RMSCO discovers that any of Employer's representations in Section 6 above are untrue) and, upon written notice to Employer and the Plan of such breach or misrepresentation, the breach or misrepresentation is not cured within sixty (60) days after receipt of the notice. EBS-RMSCO may exercise this right to terminate the Agreement by providing Employer and the Plan written notice of termination, stating the failure to cure the breach or misrepresentation that provides the basis for the termination. Any such termination will be effective immediately or at such other date specified in the notice of termination. Notwithstanding the above, if such breach or misrepresentation is not cured within sixty (60) days after Employer and the Plan receive notice of the breach or misrepresentation and termination of the Agreement is not feasible, EBS-RMSCO may report such breach or misrepresentation to the U.S. Department of Health and Human Services.

(c) Return or Destruction of PHI.

- (i) Upon termination or other conclusion of the Agreement, EBS-RMSCO will, if feasible, return to the Plan or destroy all PHI in its possession, in whatever form or medium, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of PHI. EBS-RMSCO will also require any subcontractor or agent, to which EBS-RMSCO has disclosed PHI as permitted by this Business Associate Agreement, to (if feasible) return to EBS-RMSCO (so that EBS-RMSCO may return it to the Plan) or destroy all PHI, in whatever form or medium, received from EBS-RMSCO, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of PHI. EBS-RMSCO will complete these obligations as promptly as possible, but not later than thirty (30) days following the effective date of the termination or other conclusion of the Agreement.
- (ii) EBS-RMSCO will notify the Plan of and identify any PHI, including any PHI that EBS-RMSCO has disclosed to subcontractors or agents as permitted by this, Business Associate Agreement that cannot feasibly be returned to the Plan or destroyed, and explain why return or destruction is infeasible. EBS-RMSCO will limit its further use and disclosure, and require any such subcontractor or agent to limit its further use and disclosure, of any such PHI to those purposes that make return or destruction of such information infeasible. EBS-RMSCO will complete these obligations as promptly as possible, but not later than thirty (30) days following the effective date of the termination or other conclusion of the Agreement.

- (d) Surviving Provisions. All of EBS-RMSCO's obligations to protect the privacy and safeguard the security of PHI as specified in this Business Associate Agreement will be continuous and survive termination or other conclusion of the Agreement and this Business Associate Agreement. The obligations and rights of EBS-RMSCO and Employer, and other provisions set forth in Sections 3, 5, 7, 9(b), 9(f), 9(g), will also survive termination or other conclusion of the Agreement and this Business Associate Agreement

9. General Provisions.

- (a) Amendment to Business Associate Agreement. Employer and EBS-RMSCO agree to amend this Business Associate Agreement from time to time as necessary or advisable to comply with and reflect current or future legislation, regulations or rules relating to HIPAA, the Privacy Rules, Security Rule or the HITECH Act. Such amendment, and any other amendment, to this Business Associate Agreement must be in writing and signed by the parties.
- (b) Communications. All directions, notices and other communications required or permitted by this Business Associate Agreement will be in writing and will be deemed received as of the day: (i) personally delivered; (ii) mailed, postage prepaid, certified or registered mail, return receipt requested, addressed to the intended recipient at the last address of the intended recipient known to the sender, or such other address as the intended recipient may request in writing in accordance with this Section; (iii) sent by facsimile to a facsimile number provided by the intended recipient in accordance with this Section, with a confirming copy mailed, first class, addressed to the appropriate party at the address set forth at the beginning of this Business Associate Agreement or such other address as the intended recipient may request in writing in accordance with this Section; or (iv) sent via email to an email address provided by the intended recipient in accordance with this Section, provided the intended recipient confirms receipt of the email within one (1) business day after the email is sent, which confirmation may also be sent via email reply or to any other email address provided by the sending party in accordance with this Section.
- (c) Entire Business Associate Agreement. This Business Associate Agreement contains the entire agreement between the parties with regard to the subject matter hereof. No provision of the Business Associate Agreement will be waived, except as expressly provided for in a written waiver signed by the party granting the waiver.
- (d) Headings. Headings herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Business Associate Agreement.
- (e) Successors. This Business Associate Agreement is binding upon and will inure to the benefit of the parties, their heirs, distributees, legal representatives, transferees, successors, and assigns.

- (f) Controlling Law. This Business Associate Agreement will be construed according to the laws of the State of New York, without reference to conflict of law provisions of the State of New York or the substantive laws of any other jurisdiction and applicable federal law. The venue for any legal proceeding arising out of or relating to this Business Associate Agreement will be in either the state courts sitting in Onondaga County in New York State or the United States District Court for the Northern District of New York. The parties hereby waive any claim that such court does not have personal jurisdiction over it or is an inconvenient forum. The parties also hereby waive all rights to a jury trial of any action arising out of this Business Associate Agreement to the extent permitted by law.
- (g) Conflicts. To the extent any provision of this Business Associate Agreement and the Agreement (or any other agreement between Employer and EBS-RMSCO) conflict, the provisions of this Business Associate Agreement will control over the conflicting provision of the Agreement (or such other agreement.) All non-conflicting terms and conditions of the Agreement (or such other agreement) remain in full force and effect.
- (h) Definitions. The terms "Business Associate," "Electronic PHI," "Protected Health Information," "Standard," "Trading Partner Agreement," and "Transaction" have the meanings set out in 45 CFR §160.103. The term "Standard Transaction" has the meaning set out in 45 CFR §162.103. The term "Required by Law" has the meaning set out in 45 CFR §164.103. The terms "Data Aggregation," "Designated Record Set," "Health Care Operations," "Payment," "Research," and "Treatment" have the meanings set out in 45 CFR §164.501. The term "Summary Health Information" has the meaning set out in 45 CFR §164.504(a). The term "Limited Data Set" has the meaning set out in 45 CFR §164.514(e). The term "use" means, with respect to PHI, utilization, employment, examination, analysis or application within EBS-RMSCO. The terms "disclose" and "disclosure" mean, with respect to PHI, release, transfer, providing access to or divulging to a person or entity not within EBS-RMSCO. For purposes of this Business Associate Agreement, PHI encompasses Electronic PHI. Any other capitalized terms not identified here will have the meaning set forth in 45 Code of Federal Regulations Parts 160-64 or the HITECH Act.
- (i) Authority. The person signing this Business Associate Agreement below the Employer's name represents that he or she has the authority to enter into this Business Associate Agreement on behalf of Employer and that Employer has the authority to enter into this Business Associate Agreement on behalf of the Plan.

IN WITNESS WHEREOF, Employer and EBS-RMSCO execute this Business Associate Agreement in multiple originals to be effective on the last date written below.

EBS-RMSCO, Inc.

By: Kathleen A. Galt
Its: Manager, Actuarial Services
Date: December 28, 2012

Horseheads Central School District

By: _____
Its: _____
Date: _____

EBS-RMSCO, Inc.