

**LEGAL DEPARTMENT  
CITY OF GULFPORT**

*P. O. Box 1780  
Gulfport, MS. 39502*

*City Hall  
2<sup>nd</sup> Floor  
2309-15<sup>th</sup> Street*

**MEMORANDUM**

**[To Request Matter to be placed upon Council Agenda]**

**To: Mayor Billy Hewes: Attention Dr. John Kelly, CAO**

**Council President Ricky Dombrowski  
Councilman Kenneth Casey  
Councilwoman Ella Holmes-Hines  
Councilman F. B. "Rusty" Walker, IV  
Councilman Myles Sharp  
Councilman R. Lee Flowers  
Councilwoman Cara Pucheu**

**Ronda Cole, Council Clerk**

**From: Margaret Murdock, Assistant City Attorney**

**Dated: December 30, 2013**

**RE: A RESOLUTION BY THE GULFPORT CITY COUNCIL TO APPROVE BUSINESS ASSOCIATE AGREEMENT AND CONSULTANT SERVICES AGREEMENT WITH BROWN & BROWN OF MISSISSIPPI, LLC, FOR THE PROVISION OF CERTAIN SERVICES RELATED TO THE EMPLOYEE BENEFIT PLAN AND TO AUTHORIZE THE MAYOR TO EXECUTE AND DELIVER ANY AND ALL DOCUMENTS TO EFFECTUATE THESE AGREEMENTS**

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This is to respectfully request placement and consideration of the attached item, referenced above, on the City Council Agenda **on the January 7, 2014, City Council Agenda**

**Subject:** *In August, as a part of the health insurance proposals, the City Council authorized that a contract be obtained from a vendor to provide certain services relative to the City's Employee benefit plan. Cheryl Millender of the Human Resources Office, along with Sherri Baker, health insurance consultant, have requested that the attached Agreements between the City and Brown & Brown of Mississippi, LLC, be presented to the City Council for approval in order that Brown & Brown, LLC, may provide the aforementioned services.*

The attached items have been presented to, or originate from the following Departments :

<u>Department</u>	<u>Approve</u>	<u>Disapprove</u>
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Legal Department	Margaret Murdock	
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Also reviewed and approved by:

Submitted for review and approval to:

John Kelly, CAO, and/or  
Mayor Billy Hewes

_____	_____
_____	_____

There came on for consideration at a duly constituted meeting of the Mayor and Members of the City Council of the City of Gulfport, Mississippi, held on the \_\_\_\_ day of \_\_\_\_\_, 2014, the following Resolution:

**A RESOLUTION BY THE GULFPORT CITY COUNCIL TO APPROVE BUSINESS ASSOCIATE AGREEMENT AND CONSULTANT SERVICES AGREEMENT WITH BROWN & BROWN OF MISSISSIPPI, LLC, FOR THE PROVISION OF CERTAIN SERVICES RELATED TO THE EMPLOYEE BENEFIT PLAN AND TO AUTHORIZE THE MAYOR TO EXECUTE AND DELIVER ANY AND ALL DOCUMENTS TO EFFECTUATE THESE AGREEMENTS**

**WHEREAS**, the City of Gulfport desires to obtain certain professional consultant services with regard to the City's employee benefit plan; and

**WHEREAS**, Brown & Brown of Mississippi, LLC, has offered to and is capable of providing the aforementioned services required by the City pursuant to a Business Associate Agreement and a Consultant Services Agreement; and

**WHEREAS**, it is in the best interest of the City of Gulfport that the City enter into the aforementioned agreements with Brown & Brown of Mississippi, LLC, for the provision of consultant services related to the City's Employee benefit plan; and

**WHEREAS**, proposed Agreements between the City and Brown & Brown of Mississippi, LLC, are attached hereto as Exhibit "A" for review, consideration and approval.

**NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GULFPORT, MISSISSIPPI, AS FOLLOWS, TO WIT:**

**Section 1.** That the matters, facts and things recited in the Preamble hereto are hereby adopted as the official findings of the Governing Authority.

**Section 2.** That the proposed Agreements between the City and Brown & Brown of Mississippi, LLC, as found in Exhibit "A" hereto, be and the same are, subject to final approval by the City's Legal Department, hereby approved in substantially the same or similar form as found in Exhibit "A" and that the Mayor be and he is hereby authorized, on behalf of the City of Gulfport, to enter into, sign, execute, and deliver any and all documents needed to effectuate the

awarding of the Agreements to Brown & Brown of Mississippi, LLC, including but not limited to the Agreements found in Exhibit "A" hereto.

**Section 4.** That this Resolution be, and it is hereby ordered to be spread on the minutes of the governing Authority, and to be in full force and effect immediately upon its passage and enactment according to law.

The above and foregoing Resolution, after having been first reduced to writing and ready by the Clerk, was introduced by \_\_\_\_\_, seconded by \_\_\_\_\_, and was adopted by the following roll call vote:

**AYES**

**NAYS**

**ABSENT**

**WHEREUPON**, the President declared the motion carried and the Resolution adopted this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**(SEAL)**

**ATTEST:**

**ADOPTED:**

\_\_\_\_\_  
**CLERK OF THE COUNCIL**

\_\_\_\_\_  
**PRESIDENT**

The above and foregoing Ordinance was submitted to and approved by the Mayor, this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**APPROVED:**

\_\_\_\_\_  
**MAYOR**

## CONSULTANT SERVICES AGREEMENT

THIS **CONSULTANT SERVICES AGREEMENT** (this "Agreement"), effective August 22, 2013 is made by and between the City of Gulfport (the "City") and **BROWN & BROWN OF MISSISSIPPI, LLC** ("Consultant").

### Background

Consultant is a licensed insurance agency in the State of Mississippi. The City has selected Consultant to provide certain advisory services relating to the Lines of Insurance (as hereinafter defined) and, for good and adequate consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Term.** This agreement shall have a contract period of 4 years through May 31, 2017 unless sooner terminated as provided herein.
2. **Relationship of Parties.** Consultant is an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer/employee relationship, a joint venture relationship or partnership relationship. In consideration of the compensation from the City to the Consultant, Consultant is providing services to the City as an insurance broker. However, Consultant, or its parent company, Brown & Brown, LLC and related or affiliated companies, may provide services as an insurance agent on behalf of certain insurance carriers or risk-bearing entities. The City acknowledges that, in some instances, Consultant may be performing services as an insurance agent for the insurance company and expressly consents to such relationship in the rendition of services under this Agreement.
3. **Consultant Services.** Consultant, subject to the terms of this Agreement, shall provide services set forth in the attached Exhibit A.

Nothing in this Agreement shall be construed to impose any obligations on Consultant, or limitations on Consultant's compensation, relative to any lines of insurance or coverage other than as specified in Exhibit A.

4. **Responsibilities.** In consideration of the services provided Consultant, the City agrees as follows:
  - a) The City shall cooperate fully with Consultant and the insurance companies with whom Consultant solicits in the performance of Consultant's obligations in this Agreement.
  - b) The City shall timely produce, or cause to be produced, complete and accurate information including, but not limited to, current financial information, statements of values, loss information and any other information, necessary for the effectuation of insurance coverage at the request of Consultant. The city further agrees to provide Consultant with notice of any material changes in the City business operations, risk exposures or in any other material information provided under this Agreement.

- c) The City shall pay timely all premiums and fees.
- d) The City shall review, confirm the accuracy and recommend any changes to insurance policies issued to the City, in addition to any review conducted by Consultant.
- e) The city agrees that, so long as consultant fulfills its obligations under this Agreement, the City shall not issue or cause to be issued any agent/broker of record letters that would have the effect of depriving Consultant of access to insurance markets.

5. **Compensation.** In consideration of the services provided hereunder, the City shall compensate Consultant through a "Consultant Services Fee" in the amount, and payable according to the terms, set forth as follows:

#### **CONSULTANT SERVICES FEE**

In consideration of the services provided hereunder, the City shall compensate Consultant through commissions in an amount not-to-exceed \$79,000.00 annually.

6. **Termination.**

- a) Either party may terminate this Agreement, without cause and for any reason, by giving written notice of termination to the other party at least ninety (90) days prior to the effective date of termination, which shall be specified in such written notice.
- b) Notwithstanding the provisions in sub-paragraph (a) above, the City may terminate this Agreement upon the happening of any one of the following causes:
  - i. Suspension or termination of Consultant's insurance license in the State of Mississippi, which is not cured by Consultant within (90) days following such suspension or termination;
  - ii. Consultant's participation in any fraud; or
  - iii. Consultant's material failure to properly perform its duties and responsibilities hereunder because of Consultant's gross neglect, proven dishonesty, or commission of a felony.

Termination for any cause enumerated in this sub-paragraph (b) shall become effective upon the delivery of written notice of termination to Consultant or at such later time as may be specified in written notice.

- c) Notwithstanding the provisions in sub-paragraph (a) above, Consultant may terminate this Agreement upon the happening of any one of the following causes:
  - i. The City's failure to pay any Consultant Services Fee more than thirty (30) days after such payment is due;
  - ii. The City's participation in any fraud; or

- iii. The City's material failure to properly perform its duties and responsibilities hereunder because of the City's gross neglect, proven dishonesty, or commission of a felony.

Termination for any cause enumerated in this sub-paragraph (c) shall become effective upon the delivery of written notice of termination to the City or at such later time as may be specified in the written notice.

- d) **Survival.** Termination of this Agreement shall not release the City from any accrued obligation to pay any sum to Consultant (whether then or thereafter payable) or operate to discharge any liability incurred prior to the termination date.

7. **Notices.** Any notices required or permitted to be given under this Agreement shall be sufficient if in writing and if sent by Certified Mail to:

City at:

Human Resources Manager  
City of Gulfport  
  
Gulfport, MS 39503

Consultant at:

Employee Benefits Practice Director  
Brown & Brown of Mississippi, LLC  
14110 Airport Road, Suite  
Gulfport, MS 39503

With a Copy to:

Brown & Brown, Inc.  
220 S. Ridgewood Avenue  
Daytona Beach, FL 32114  
Attn: Robert W. Lloyd, General Counsel

Or such other address as either party shall give to the other in writing for this purpose.

8. **Interpretation.** This Agreement shall not be construed or interpreted in a manner adverse to any party on the grounds that such party was responsible for drafting any portion of it.
9. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision.
10. **Mississippi Law Applies.** This Agreement has been made and executed in the State of Mississippi and shall be governed by and construed and enforced in accordance with the laws of the State of Mississippi, without regard to conflicts of laws principles.
11. **Venue.** Exclusive venue is agreed to be in a State or federal court of competent jurisdiction in or for Harrison County, Mississippi.

- 12. Waiver of Jury Trial.** The parties waive any right to a trial by jury in the event of litigation arising out of this agreement.
- 13. Paragraph Headings.** The paragraph headings and designations used through this Agreement have been inserted solely for convenience in reference and shall in no way be taken to limit or extend the natural and proper construction or meaning of the language employed within the paragraph.
- 14. Assignment.** Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed. This Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and permitted assigns.
- 15. Entire Agreement.** This Agreement (including the documents and instruments referred to herein) constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. This Agreement shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed on behalf of the Board and consultant by their respective duly authorized representatives.

**IN WITNESS WHEREOF,** the parties to this Consultant Services Agreement have hereunto set their hand and seals.

Witnesses (2):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**COMPANY:**

City of Gulfport

By \_\_\_\_\_

Name Billy Hewes

Title: Mayor

**CONSULTANT:**

Brown & Brown of Mississippi, LLC

By Sherri C Baker

Name SHERRI C BAKER

Title: EMP. BEN. PRACTICE DIRECTOR

8/29/2013



	OUR SERVICE	Benefit for the City of Gulfport
Renewal Services	Underwriting analysis of renewal	Accurate and verified premium prices, plan specification and eligibility data.
	Creating actuarial rates	Appropriate rates created based on your claims history.
	Claims analysis to isolate problematic areas using PlanAdvisor during a single period	Cost and utilization data benchmarked against nationally recognized norms to compare performance with others in the field for a single period.
	Claims analysis to isolate problematic areas using DMW for the year	Cost and utilization data benchmarked against nationally recognized norms to compare performance with others in the field.
	Interpretation of claims analysis and development of action plan	Interpret the claims analysis and develop an action plan including benefit plan design, communication and disease management recommendations, etc.
	Mid-year renewal	Better budgeting and forecasting.
	Insurance carrier contract renewal	Negotiated reductions in rates and plan alternatives from carriers.
	Carrier evaluation	Best carriers, provider networks on a regional and national basis, based on financial stability, quotes from existing and new carriers and unique company needs.
	Voluntary needs analysis and market study	Best carriers and plans for your unique needs, benchmarking with voluntary benefits nationwide.
	RFP creation	Complete evaluation of benefit plans and market study.
	Plan Design Modeling	Informed plan recommendations through experimentation with potential options through proven actuarial factors.
	Ancillary lines of coverage renewal	Appropriate ancillary coverage and hassle-free renewal.
Strategic Services	Employee questionnaire	Accurate picture of employees' needs and priorities through implementation of an extensive questionnaire.
	Creation of employee benefits strategic plan	Creation of plan identifying critical areas and recommended actions.
	Benchmark plan design for comparison	Compare your current plan design to normative benchmarks given your region, plan type, group size and industry.
	New employee administration	Fully managed benefit enrollment communication to carrier regarding new employees.
	Ongoing service with carrier	Resolutions of claims issues, ongoing administration and communication of claims, case approvals through work with underwriters and carriers – quickly resolved problems and managed outcomes.
Enrollment	Portal for employees to access HR/benefits information / online enrollment	Customized, privacy protected site for employer and employee access for enrollment, reports, core communications to employees, education & training
	Employee enrollment meetings	Custom administration options for enrollment.
	Collection and review of enrollment materials	Reduced administrative time, better efficiency, ensured accuracy.
	Enrollment communication to carrier	Aid in completion of carrier applications and supplemental information as required, including support in the completion of applications, contracts, checks and collection of enrollment materials
	Wellness Program Administration and Support	Wellness App, eHealth Clinic, Rewards Tracking Application
	Enrollment communication campaign	Materials for easy communication of benefit plan specifics and various options, including consumer-driven health plans.
Employee Communication	Employee newsletters	Monthly newsletters promoting wellness programs and healthy living.
	Benefits education campaign	Materials for employee benefits education, promoting smart benefits use.
	Employee benefit statements	Improved morale and appreciation of benefits package with statements that educate employees about their "hidden paycheck."
	Wellness campaign	Help with design and implementation of an employee wellness campaign.



	Social Media Consulting	Help creating strategy and implementing a social media presence.
Legislative Compliance	Health Care Reform	Up-to-date information on legislative developments, easy-to-understand explanations of what they mean to you.
	Health Care Reform Notifications	Summary of Benefit Coverage production and distribution. Production and distribution of Notice of Exchange Availability.
	Health Care Reform Minimum Value Calculation	Production of document indicating the estimated actuarial value of the health plan, suitable for inclusion in annual employer reporting.
	Health Care Reform Penalty Modeling	An estimate of the potential shared responsibility penalties your organization could incur under health care reform.
	COBRA	Extensive guides to compliance, employee communications.
	HIPAA	Extensive guides to compliance, employee communications.
	FMLA	Extensive guides to compliance, employee communications.
	Section 125	Extensive guides to compliance, employee communications.
	Medicare Part D	Extensive guides to compliance, employee communications.
	Additional employment law compliance	CHIPRA, GINA, EEOC, ADA, etc.
	Summary Plan Description	Review and/or produce SPD to ensure compliance
Human Resources	Time-off tracking	Simple time-off tracking brings employees to the site
	Employee handbook	Customizable handbook including recommended policies and corresponding forms.
	Access to professional community	Ability to network and find answers from 300,000+ peers nationwide.
	Benchmark survey data	An accurate picture of how practices compare to peers nationwide regarding benefit offerings, plan design, costs, etc.
	HR library of forms	Library of fillable HR forms on demand.

## **Business Associate Agreement**

This Business Associate Agreement (“Agreement”) is being entered into between Brown & Brown of Mississippi, LLC (“Business Associate”) and all of the Health Plans of Plan Sponsor (“Covered Entity”) to facilitate compliance with the HIPAA Rules. In consideration for the compensation paid to Business Associate to provide services relating to and on behalf of Covered Entity, the parties agree to the terms set forth in this Agreement.

### **Article 1**

#### **Definitions**

The following terms have the meanings described in this Article for purposes of the Agreement unless the context clearly indicates another meaning. Terms used, but not otherwise defined, in this Agreement have the same meaning as those terms in the Privacy Rule.

##### **1.1 Business Associate**

“Business Associate” means the person or entity described in the first paragraph of this Agreement.

##### **1.2 CFR**

“CFR means the Code of Federal Regulations.

##### **1.3 Covered Entity**

“Covered Entity” means all of the Health Plans maintained by Plan Sponsor.

##### **1.4 Designated Record Set**

“Designated Record Set” has the same meaning as the term “Designated Record Set” in 45 CFR 164.501.

##### **1.5 Electronic Health Record**

“Electronic Health Record” means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

##### **1.6 HIPAA**

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996.

##### **1.7 HIPAA Rules**

“HIPAA Rules” means the privacy, security, breach notification and enforcement rules of 45 CFR Parts 160 and 164.

## **1.8 HITECH Amendment**

“HITECH Amendment” means the changes to HIPAA made by the Health Information Technology for Economic and Clinical Health Act.

## **1.9 Individual**

“Individual” has the same meaning as the term “individual” in 45 CFR 160.103 and includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

## **1.10 Plan Sponsor**

“Plan Sponsor” means City of Gulfport.

## **1.11 Protected Health Information**

“Protected Health Information” has the same meaning as the term “Protected Health Information” in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

## **1.12 Required By Law**

“Required By Law” has the same meaning as the term “required by law” in 45 CFR 164.103.

## **1.13 Secretary**

“Secretary” means the Secretary of the Department of Health and Human Services or his designee.

## **1.14 Security Incident**

“Security Incident” has the same meaning as the term “Security Incident” in 45 CFR 164.304.

# **Article 2**

## **Obligations and Activities of Business Associate**

Business Associate agrees to perform the obligations and activities described in this Article.

**2.1** Business Associate understands that it is subject to the HIPAA Rules in a similar manner as the rules apply to Covered Entity. As a result, Business Associate agrees to take all actions necessary to comply with the HIPAA Rules for business associates, including, but not limited to, the following: Business Associate shall establish policies and procedures to ensure compliance with the HIPAA Rules, Business Associate shall train its workforce regarding

the HIPAA Rules, Business Associate shall enter into a privacy/security agreement with Covered Entity, Business Associate shall enter into privacy/security agreements with its subcontractors that perform functions relating to Covered Entity involving Protected Health Information, and Business Associate shall conduct a security risk analysis.

**2.2** Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.

**2.3** Business Associate agrees to 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 the Protected Health Information other than as provided for by this Agreement.

**2.4** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

**2.5** Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware and/or any Security Incident of which it becomes aware.

**2.6** Business Associate agrees to the following in connection with the breach notification requirements of the HIPAA Rules:

(a) If Business Associate discovers a breach of unsecured Protected Health Information, as those terms are defined by 45 CFR 164.402, Business Associate shall notify Covered Entity without unreasonable delay and within 10 calendar days after discovery. For this purpose, discovery means the first day on which the breach is known to Business Associate or by exercising reasonable diligence would have been known to Business Associate. Business Associate shall be deemed to have knowledge of a breach if the breach is known or by exercising reasonable diligence would have been known to any person, other than the person committing the breach, who is an employee, officer, subcontractor or other agent of Business Associate. The notification must include identification of each individual whose unsecured Protected Health Information has been or it has reasonably believed to have been breached and any other available information in Business Associate's possession which the Plan is required to include in the individual notice contemplated by 45 CFR 164.404.

(b) Notwithstanding the immediately preceding paragraph, Business Associate shall assume the individual notice obligation specified in 45 CFR 164.404 on behalf of Covered Entity where a breach of unsecured Protected Health Information was committed by Business Associate or its employee, officer, subcontractor or other agent of Business Associate or is within the unique knowledge of Business Associate as opposed to Covered Entity. In such case, Business Associate will prepare the notice and shall provide it to Covered Entity for review and approval at least five calendar days before it is required to be sent to the affected individual(s). Covered Entity shall promptly review the notice and shall not unreasonably withhold its approval.

(c) Further, where a breach involves more than 500 individuals and was committed by the Business Associate or its employee, officer, subcontractor or other agent or is within the unique knowledge of Business Associate as opposed to Covered Entity. Business Associate shall provide notice to the media pursuant to 45 CFR 164.406. Again, Business Associate will prepare the notice and shall provide it to Covered Entity for review and approval at least five calendar days before it is required to be sent to the media. Covered Entity shall promptly review the notice and shall not unreasonably withhold its approval.

(d) Business Associate shall either report breaches of unsecured Protected Health Information with respect to Covered Entity to the Secretary in accordance with 45 CFR 164.408 or alternatively, shall maintain a log of breaches of unsecured Protected Health Information with respect to Covered Entity and shall submit the log to Covered Entity within 30 calendar days following the end of each calendar year so that Covered Entity may report the breaches to the Secretary in accordance with 45 CFR 164.408(c).

**2.7** Business Associate agrees to ensure that any agent, including a subcontractor, that creates, receives, maintains or transmits Protected Health Information on behalf of Business Associate regarding Covered Entity, agrees in writing to the same restrictions, conditions and requirements that apply through this Agreement and the HIPAA Rules to Business Associate with respect to such information. Moreover, Business Associate shall ensure that any such agent or subcontractor agrees to implement reasonable and appropriate safeguards to protect Covered Entity's electronic Protected Health Information.

**2.8** Business Associate agrees to provide reasonable access, at the written request of Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed in writing by Covered Entity, to an Individual or the Individual's designee in order to meet the requirements under 45 CFR 164.524. If Business Associate receives a request directly from an Individual or the Individual's designee, Business Associate shall notify Covered Entity as soon as administratively feasible in order for the parties to coordinate a response.

**2.9** Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs in writing or agrees to pursuant to 45 CFR 164.526, or take any other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526. If Business Associate receives a request directly from an Individual or the Individual's designee, Business Associate shall notify Covered Entity as soon as administratively feasible in order for the parties to coordinate a response.

**2.10** Following receipt of a written request by Covered Entity, Business Associate agrees to make its internal practices, books, and records including policies and procedures and Protected Health Information relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity reasonably available to the Secretary for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Rules.



**2.11** Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528, effective as of such effective date prescribed by regulations issued by the U.S. Department of Health and Human Services, an accounting of disclosures of Protected Health Information from an Electronic Health Record in accordance with the HITECH Amendment.

**2.12** Following receipt of a written request by Covered Entity, Business Associate agrees to provide to Covered Entity or an Individual or the Individual's designee, information collected in accordance with Section 2.10 of this Agreement, to permit Covered Entity to respond to a request by an Individual or the Individual's designee, for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528, effective as of such effective date prescribed by regulations issued by the U.S. Department of Health and Human Services, an accounting of disclosures of Protected Health Information from an Electronic Health Record in accordance with the HITECH Amendment. If Business Associate receives a request directly from an Individual or the Individual's designee, Business Associate shall notify Covered Entity as soon as administratively feasible in order for the parties to coordinate a response.

**2.13** To the extent Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.

### **Article 3**

#### **Permitted Uses and Disclosures by Business Associate**

**3.1** 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 underlying service agreement between Plan Sponsor and Business Associate with respect to the Health Plan(s), provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity. If there is no underlying service agreement between Plan Sponsor and Business Associate with respect to the Health Plan(s), Business Associate may use or disclose Protected Health Information to perform functions, activities or services for, or on behalf of, Covered Entity for the purposes of payment, treatment or health care operations as those terms are defined in the HIPAA Rules, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity.

Business Associate is authorized to use Protected Health Information to de-identify the information in accordance with 45 CFR 164.514(a)-(c). Before proceeding with any such de-identification, Business Associate shall inform Covered Entity in writing of the manner in which it will de-identify the Protected Health Information and the proposed use and disclosure by the Business Associate of the de-identified information.

**3.2** Business Associate may use or disclose Protected Health Information as Required by Law.

**3.3** Business Associate agrees to make uses and disclosures and requests for Protected Health Information consistent with Covered Entity's minimum necessary policies and procedures.

**3.4** Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth in this Article.

**3.5** Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

**3.6** Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances in writing from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

**3.7** Business Associate may use Protected Health Information to provide data aggregation services relating to the health care operations of the Covered Entity.

## **Article 4**

### **Obligations of Covered Entity**

**4.1** Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

**4.2** Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

**4.3** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

**4.4** Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45

CFR Part 164 if done by Covered Entity. However, there is an exception to this restriction if, pursuant to this Agreement, Business Associate uses or discloses Protected Health Information for data aggregation or management and administration and legal responsibilities of the Business Associate.

## **Article 5**

### **Term and Termination**

#### **5.1 Term**

This Agreement shall replace and take precedence over any prior business associate agreement entered into between the parties. It shall take effect on September 1, 2013 and shall terminate on the date the Agreement is terminated for cause pursuant to Section 5.2 or such other date as agreed to by the parties in writing.

#### **5.2 Termination for Cause**

Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines that Business Associate has violated a material term of the Agreement. In this situation, Covered Entity shall either:

(a) Provide an opportunity for Business Associate to cure the breach or end the violation, and terminate this Agreement if Business Associate does not cure the breach or end the violation within a reasonable time, as specified by Covered Entity; or

(b) Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and Covered Entity determines that cure is not possible.

#### **5.3 Effect of Termination**

(a) Except as provided in subparagraph (b) upon termination of this Agreement, for any reason, Business Associate shall return or if agreed to by Covered Entity, destroy all Protected Health Information received from Covered Entity, or created, maintained or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form. Business Associate shall retain no copies of the Protected Health Information.

(b) In the event that Business Associate determines that returning or destroying the Protected Health Information is necessary for its own management and administration or to carry out its legal responsibilities and Business Associate determines that it needs to retain the Protected Health Information for such purposes after termination of the Agreement, Business Associate agrees to the following restrictions set forth in this subsection. Specifically, upon termination of this Agreement, for any reason, Business Associate, with respect to Protected Health Information received from Covered

Entity, or created, maintained or received by Business Associate on behalf of Covered Entity, shall:

(i) Retain only the Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

(ii) Return to Covered Entity or if agreed to by Covered Entity, destroy the remaining Protected Health Information that Business Associate still maintains in any form;

(iii) Continue to 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 the Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;

(iv) Not use or disclose the Protected Health Information retained by Business Associate other than for the purposes for which the Protected Health Information was retained and subject to the same conditions set out in Sections 3.5 and 3.6 which apply prior to termination; and

(v) Return to Covered Entity or, if agreed to by Covered Entity in writing, destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

(c) Notwithstanding any other provision of this Section, Covered Entity may authorize Business Associate to transmit Protected Health Information to another Business Associate of the Covered Entity at termination pursuant to Covered Entity's written instructions.

(d) This Section shall apply to Protected Health Information that is in the possession of subcontractors of Business Associate and Business Associate shall be obligated to ensure the return or destruction (if agreed to by Covered Entity) of such Protected Health Information.

## **Article 6**

### **Miscellaneous**

#### **6.1 Notice**

Any notice or other written communication required or permitted to be given to the other party under this Agreement must be addressed to the attention of the other party in care of the contact person identified below. Written notice may be delivered by certified mail or overnight mail.

Business Associate:

Brown & Brown of Mississippi, LLC  
Contact Person: Sherri C. Baker  
14110 Airport Road, Suite 200  
Gulfport, MS 39503

Covered Entity:

Health Plans of: City of Gulfport  
Contact Person: Cheryl Millender  
Hardy Building  
1410 24th Avenue, Gulfport, MS

**6.2 Regulatory References**

A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

**6.3 Amendment**

This Agreement may only be amended in a written document signed by an authorized representative of each party. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the HIPAA Rules and any other applicable law. If the Business Associate refuses to sign such an amendment, this Agreement shall automatically terminate.

**6.4 Survival**

The rights and obligations of Business Associate under Section 5.3 of this Agreement shall survive the termination of this Agreement.

**6.5 Interpretation**

Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

**6.6 Successors**

This Agreement is binding on each party's legal successors.

**6.7 Indemnification**

Regardless of whether Business Associate is Covered Entity's agent, Business Associate agrees to indemnify and hold harmless Covered Entity, Plan Sponsor and its directors, officers and employees against any and all claims, lawsuits, settlements, judgments, costs, penalties and expenses including attorneys fees resulting from or arising out of or in connection



with a use or disclosure of Protected Health Information by Business Associate or its subcontractors or agents in violation of this Agreement.

Covered Entity and Plan Sponsor agree to indemnify and hold harmless Business Associate and its directors, officers and employees against any and all claims, lawsuits, settlements, judgments, costs, penalties and expenses including attorneys fees resulting from or arising out of or in connection with a use or disclosure of Protected Health Information by Covered Entity or Plan Sponsor, or agents of Covered Entity or Plan Sponsor, in violation of this Agreement.

**6.8 No Beneficiaries**

Nothing expressed or implied in this Agreement is intended to confer, nor shall anything confer, upon any person other than the Covered Entity, Plan Sponsor and Business Associate, and their respective successors or assigns, any rights, remedies, obligations or liabilities.

Brown & Brown of Mississippi, LLC (Business Associate)

Dated: 8/28/2013

By *Sherril Baker*  
Its Employee Benefits Practice Director

Health Plans of City of Gulfport (Covered Entity)

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Its *Mayor*