

Claims Audit Service Agreement

This Claims Audit Service Agreement (the "Agreement") is entered into by and between Seneca Consulting Group, Inc. a New York corporation (hereinafter "SENECA") and City of Niagara Falls (hereinafter "Client") on the following terms and conditions:

1. Definitions

As used in this Agreement, the following defined terms have the following meaning:

- a) **TPA** is the Third Party Administrator or other Healthcare Claims payment organization processing claims on behalf of the Client. **PBM** is the Pharmacy Benefits Manager or other Pharmacy Claims payment organization processing pharmacy claims on behalf of the Client.
- b) **Healthcare Claim(s)** are the claims and the supporting information submitted by subscribers, dependents, or providers to the TPA/PBM seeking reimbursement for services covered by Client's health and welfare benefit plan, including information created by the TPA/PBM related to the payment or disposition of the submission.
- c) **Identified Amounts** are any overpayments of Healthcare Claims identified by SENECA during the Claims Audit which are an error or recovery item regardless of assignment of fault for the error or the ability of the TPA/PBM to recover the overpayment. Identified Amounts also include all out-of-sample claims associated with those error categories from sample claims.
- d) **Recovered Amounts** are any Identified Amounts resulting in a cash refund or credit to the Client's healthcare plan, including but not limited to, those Recovered Amounts described in Section 7(b) of this Agreement.
- e) **Agreed to Overpayments** is the total amount of overpayments calculated based on the applying the onsite claims that are confirmed to have overpayments by both the TPA and Seneca, to the entire Claims Data Set
- f) **Claims Audit** is the service provided by SENECA which normally includes reviewing the Claims Data Set electronically for likely overpayments, confirming any overpayments with the TPA/PBM, and recommending a course of action to be implemented by the TPA/PBM and Client for correcting underlying problems and recovering any Healthcare Claims overpayments.
- g) **Claims Data Set** is the electronic file provided by the TPA/PBM that provides the historical record and data of Healthcare Claims paid on Client's behalf that will be used to conduct the Claims Audit.
- h) **Party or Parties** refers to Client and SENECA.
- i) **Grace Period** is defined as an extended period of time (no more than thirty calendar days) for Employees to respond to the Dependent Eligibility Review request for documents

- j) **Ineligible Dependent** is defined as any dependent listed on the Final Census Data Extract (1) who is identified by the Employee as ineligible (“Self-Reported Ineligible Dependent”), or (2) for whom the Employee has not provided Proper Documents, whether or not identified as ineligible by the Employee (“Deemed-Ineligible Dependent”). For purposes of this Review, any dependent removed from coverage by the Employee due to the dependent’s valid status change will not be considered an Ineligible Dependent, so long as Client provides proof to SENECA that the status change occurred within thirty calendar days of the removal. Any dependent associated with an Employee whom the Client elects to exempt or remove from the Review after the Project Mailing Date will be considered an Ineligible Dependent. Any dependent associated with an employee whose employment is terminated by Client during the Review will not be considered ineligible; however, SENECA may request proof of such termination.
- k) **Project Closure Date** is defined as the end of the Grace Period.
- l) **Project Mailing Date** is defined as the date that at least 95% of the Employee communication packages are placed into the U.S. mail.
- m) **Projected First-Year Savings** is equal to Employer’s Annual Cost per Participant (Employees and Dependents) multiplied by the number of Ineligible Dependents.
- n) **Proper Documents** represent those documents specified by Client and agreed to by Seneca as acceptable proof of dependent eligibility

2. Duties of SENECA

SENECA shall:

- a) Meet with Client personnel, either by phone or in person, to outline the Claims Audit process, submit an information request to Client, and establish a process for resolving questions SENECA may have during the Claims Audit with the appropriate Client personnel.
- b) Provide a Claims Audit scope and/or data request to the TPA/PBM.
- c) Review Claims Data Set for completeness.
- d) Compare total amount paid by TPA/PBM to healthcare providers as set forth in the Claims Data Set versus the amount funded by Client for Healthcare Claims.
- e) Perform an analysis of the Claims Data Set to detect potential overpayments in some or all of the following areas: duplicate payments, payments outside valid eligibility, benefits application, procedure bundling/unbundling, accuracy of pricing and provider contract application, timely filing, coordination of benefits, multiple surgery discounts, and assistant surgeon discounts AWP discounts and dispensing fees, special programs as applicable such as preauthorization requirements and DAW penalties, member copayments and coinsurance, non-covered items, benefit maximums, duplicate therapies, coordination of benefits, and reconciliation of per script rebates programs.

Client agrees that the scope of the Claims Audit, the analysis performed during the Claims Audit and the decision to analyze any particular area for potential overpayments during the Claims Audit, shall be determined solely by, and at the discretion of, SENECA. SENECA does not warrant or represent that it will discover any or all errors or overpayments, or any particular number or percentage of errors or overpayments made by the TPA/PBM.

- f) Review a sample of claims on a site visit at the TPA/PBM with the total number of site visit claims to be negotiated with the TPA/PBM consistent with any limitations in the audit rights between Client and TPA/PBM.
- g) Deliver reports to TPA/PBM and Client identifying specific Healthcare Claims that Client may be entitled to recover, and review such reports with Client and/or TPA/PBM at Client's discretion.
- h) Provide Client, as appropriate, with updates showing progress throughout the project, as well as a final report identifying Identified Amounts and Recovered Amounts as reported by the Client or the TPA/PBM to SENECA.
- i) Analysis of healthcare plan eligibility definitions
- j) Seneca develops communications strategy and draft communications
- k) Seneca print shop prints, assembles, and mails personalized Dependent Eligibility Review Communications to employees
- l) Seneca manages incoming employee responses (calls/documentation) to Dependent Eligibility Review during Employee Response Period and Grace Period
- m) Seneca prints and mails first reminder letter to employees with no response or incomplete response.
- n) Seneca prints and mails final reminder letter to employees with no response or incomplete response.
- o) Encrypted CD containing images of all employee forms and documentation for employees whose dependent documentation is incomplete or who have self-reported one or more ineligible dependents.

3. Duties of Client

Client shall:

- a) Notify TPA/PBM of the Claims Audit and authorize release of all information and data to SENECA necessary to complete the Claims Audit, including but not limited to, the Claims Data Set.
- b) Prior to the delivery of the Claims Data Set to SENECA, provide written notice to SENECA of any Pharmacy Claim overpayments already identified by Client or TPA/PBMPBM.
- c) Provide SENECA with the following documentation to support the pharmacy audit: Summary Plan Descriptions for all options and time periods covered by the Pharmacy Audit, banking files showing amount paid by claims or summary check run data of funding by Client for the time periods audited if banking file

is not available, any electronic eligibility or other eligibility records maintained by Client, and copies of contracts between the Client and TPA/PBMPBM.

- d) Verify Recovered Amounts and provide SENECA access to monthly reports, bill summaries, and other documentation provided by TPA/PBMPBM which may reasonably be expected to contain information regarding Recovered Amounts.
- e) Provide all documentation from TPA/PBMPBM showing collection of Pharmacy Claim overpayments identified by SENECA within 30 days of Client's receipt of this information from TPA/PBMPBM.

4. Relevant Time Frame for Claims Audit

This Agreement shall apply to all Healthcare Claims paid under Client's healthcare plans during the following time periods:

January 1st 2018- Current

This time period can be modified upon written agreement (including email) between the Parties to include additional time periods due to delays in beginning the Claims Audit or to account for other restrictions imposed by the TPA/PBM.

5. Term

This Agreement shall be effective beginning on June 1st 2018, (the "Effective Date"), and shall continue thereafter for a period of 18 months.

6. Termination

Either Party may terminate this Agreement, for any reason, upon thirty (30) days advanced written notice to the other Party. The Agreement shall terminate at the end of such thirty (30) day period. Termination or expiration of this Agreement shall not relieve Client of its obligations pursuant to paragraphs 3(d), 3(e), 3(f), 7, 8, 9, 12, 14, 15, 18 and 19, all of which shall survive termination or expiration of the Agreement and be continuing obligations.

7. Compensation

- a) Client shall pay SENECA 50% of all dollars recovered as a result of the Medical and Pharmacy Claims Audit, and \$25 for each employee with dependent coverage for the dependent eligibility audit.
- b) In the event of termination of this Agreement by Client in accordance with paragraph 6 of this Service Agreement, SENECA shall be entitled to the fees provided for in paragraph 7(a) above estimated to a percentage completion of the project as mutually agreed upon by the Parties.
- c) SENECA shall be responsible for any costs and expenses incurred by it while providing services during the engagement.
- d) Client shall remit to SENECA the appropriate fee determined in accordance with paragraph 7(a) within thirty (30) days of the bill for such services. Failure to pay this fee within thirty (30) days will result in an interest charge of 4%, or the maximum interest rate allowed by law if less than 4%, of the total fee owed

per month, to be assessed each month until the full balance of the fee owed is paid to SENECA.

8. Impact on Members

SENECA will provide Client an opportunity to review reports that could impact its members and make decisions regarding whether the recovery should proceed related to the member portion of these claims. SENECA will follow all Client decisions regarding recovery that will impact members. Client will take all reasonable efforts to pursue recovery in accordance with Client's obligations under paragraph 3 of this Agreement.

9. Confidentiality

- a) The Claims Audit process requires access to member records and other highly personal information. SENECA understands that Client's claims data is highly confidential, and SENECA agrees to use and disclose such information only in compliance with the Business Associate Agreement attached hereto and incorporated by reference as Attachment A.
- b) Client agrees that SENECA's Healthcare Claims Audits are conducted by applying proprietary, confidential audit processes and logic, the employment of trade secrets and proprietary technology and software, all of which are confidential proprietary business information, trade secrets and the intellectual property of SENECA which shall not be used, disclosed or otherwise disseminated to third parties. Client further agrees that any unauthorized use or disclosure of this information by Client will result in immediate irreparable injury to SENECA that cannot be compensated adequately by money alone. Therefore, Client agrees and consents to the entry of a temporary restraining order and preliminary injunction against it as a matter of course restraining any actual or threatened violation by Client of the confidentiality provisions set forth in paragraph 9(b) of this Agreement and such other persons as the Court shall order. The rights and remedies provided to SENECA in this paragraph 9(b) are not exclusive but are in addition to any other rights and remedies otherwise available to SENECA under this Agreement or applicable law.

10. Release for Use as Reference

Client hereby authorizes SENECA to use its name in verbal and written communications as a current or previous Client as well as a professional reference. No additional information about the findings, benefits design, or that beyond a simple reference to Client is permitted without the consent of an authorized representative from Client.

11. Relationship of Parties and No Third Party Beneficiaries

In performing services under this Agreement, SENECA is acting as an independent contractor. Nothing contained herein shall be construed as creating a partnership, joint venture, agency or employment relationship between SENECA and Client or

any of its subsidiaries or related entities. The parties agree that there are no intended third party beneficiaries to this Agreement and nothing in this Agreement shall be construed to create any third party beneficiary rights in any person or entity. Client shall not exercise control or direction over the manner or method by which SENECA performs the services which are the subject matter of this Agreement. Client agrees and understands that SENECA is merely identifying overpayment of Healthcare Claims and Client and its TPA/PBM are solely responsible for the actual collections of, or efforts to collect, any Identified Amounts. Client agrees and understands that SENECA is not a guarantor of, nor guaranteeing, the receipt by Client of any Healthcare Claims overpayments.

12. Indemnity

- a) Client shall indemnify and hold SENECA and its successors, assigns, shareholders, directors, officers, employees, agents, affiliates, subsidiaries, parents and representatives harmless from and against any and all liabilities, demands, causes of action, lawsuits, governmental actions, losses, damages, fines, penalties, costs and expenses, as well as all of SENECA's costs to defend any claims, including but not limited to actual attorney's fees (as defined in paragraph 18(b) of this Agreement) relating to Client's conduct or any act or omission of Client and/or its directors, officers, employees, agents or subcontractors.
- b) SENECA shall indemnify and hold Client and its successors, assigns, shareholders, directors, officers, employees, agents, affiliates, subsidiaries, parents and representatives harmless from and against any and all liabilities, demands, causes of action, lawsuits, governmental actions, losses, damages, fines, penalties, costs and expenses, as well as Client's costs to defend any claims, including but not limited to actual attorney's fees (as defined in paragraph 18(b) of this Agreement) for any intentional and wrongful misconduct of SENECA and/or its directors, officers, employees, agents or subcontractors.

13. Assignment

SENECA may use subcontractors to conduct any portion of services offered to Client in its own discretion, without the acknowledgement or permission of Client. SENECA will hold all subcontractors to the terms and conditions of this contract, including the obligations as a Business Associate of Client as described in Attachment A. Client may not assign its rights or delegate its responsibilities under this Agreement without the prior written consent of SENECA.

14. Notices

Any payment, demand, invoice, notice or declaration of any kind which must be delivered to the other Party shall be in writing and served either personally, by facsimile with proof of receipt, by overnight carrier with written confirmation of delivery, or by United States first-class mail, postage prepaid, to the attention of

the individual designated below by each party at the following addresses or facsimile numbers:

To Client at: **City of Niagara Falls Finance Department**
745 Main Street
Niagara Falls, NY 14302-0069
Attention: **Daniel Morello, City Controller**
Facsimile: **(716) 286-4496**

To SENECA at: **Seneca Consulting Group, Inc.**
960 Wheeler Road #5367
Hauppauge, NY 11788
Attention: **Daniel C. Opinante**

15. Limitation of Liability and Damages and Waiver of Jury

- a) **Limitation of Damages.** IN NO EVENT SHALL SENECA HAVE ANY LIABILITY TO CLIENT FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY.
- b) **Limitation of Liability and Waiver of Jury.** IN NO EVENT SHALL SENECA'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER INCURRED WITH RESPECT TO ONE CLAIM, OR MULTIPLE RELATED OR UNRELATED CLAIMS, AND WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED AN AMOUNT EQUAL TO THE LESSER OF (i) THE DIRECT DAMAGES TO CLIENT OR (ii) THE TOTAL FEES PAID BY CLIENT TO SENECA IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE CLAIMS. THE PARTIES AGREE TO WAIVE ANY RIGHT TO, OR TRIAL BY, A JURY AND AGREE THAT ANY LEGAL PROCEEDING SHALL BE CONDUCTED ONLY AS A BENCH TRIAL IN FRONT OF A JUDGE.
- c) **Essential Term of the Agreement.** Client acknowledges and agrees that the disclaimers, exclusions and limitations of liability and damages set forth in Section 15 of this Agreement form an essential term of the Agreement between the Parties, and, absent the foregoing disclaimers, exclusions or limitations of liability and damages, SENECA would not enter into this Agreement.

16. Severability

If one or more of the provisions contained in this Agreement, or any portion of any provision contained in this Agreement, shall for any reason be held unenforceable in any respect, the unenforceable provision or portion thereof, shall not affect the remaining portion of such provision or any other provision of this Agreement, all of which shall remain in full force and effect.

17. Waiver

A waiver or indulgence of any breach of any provision of this Agreement shall not be deemed or construed as a waiver of any other provision, affect the validity of the remainder of this Agreement or constitute a waiver of any preceding or subsequent breach of the same or any other provision of this Agreement.

18. Disputes

- a) If a dispute arises pursuant to or in connection with this Agreement, the complaining party shall reduce the dispute to writing and submit it to the Client's CEO or President, or John M. Graham of SENECA, as the case may be, followed by a meeting between these individuals within thirty (30) days of receipt of the written dispute. If the matter is not resolved to the mutual satisfaction of the parties after the required meeting, either party may then institute legal action. Notwithstanding the foregoing, this paragraph shall not apply to any breach of the confidentiality provisions set forth in paragraph 9 of this Agreement.
- b) If Client or SENECA institutes legal action to enforce the terms of this Agreement, then the prevailing Party in any such litigation shall be entitled to recover its reasonable attorneys' fees and expenses incurred in the litigation. For purposes of this paragraph, and paragraph 12 of this Agreement, an attorney's fee shall be limited to such attorney's actual hours expended on the matter multiplied by the attorney's customary hourly rates for such work without regard to, and with no increase or multiplier due to, for example, the attorney having accepted the matter on a contingency fee basis.

19. Governing Law, Venue and Jurisdiction

This Agreement is made and entered into in the state of New York and will be governed by the laws of the state of New York, without regard to choice or conflicts of law principles. Any legal proceedings brought to enforce this Agreement, or any claims relating to, associated with or arising out of this Agreement, shall be brought only in the state or federal courts located in Davidson County, New York. The parties expressly waive any objection to venue or personal jurisdiction in the state or federal courts located in Davidson County, New York.

20. Authority to Contract

Each party to this Agreement hereby represents and warrants that it has the full right, power and authority to enter into this Agreement. Each person signing this Agreement on behalf of an entity represents and warrants that he or she has the

full right, power, authority and capacity to sign this Agreement on behalf of the entity for which he or she has signed this Agreement.

21. No Strict Construction Against a Party

Each party acknowledges that they have had the opportunity through legal counsel or otherwise to participate and have participated in the negotiation of the terms of this Agreement and the language incorporating those terms into the Agreement. In the event that an ambiguity, or question of intent, construction or interpretation of this Agreement arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of its role or participation, or lack thereof, in negotiating the terms of this Agreement or its authorship, role or participation, or lack thereof, in drafting any provision of this Agreement.

22. Execution of Agreement

This Agreement may be executed in counterparts and each such fully executed counterpart shall constitute an original, all of which together shall constitute one and the same agreement. A facsimile or PDF signature shall be deemed an original signature.

23. Headings

This section and the paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

24. Entire Agreement

This Agreement contains the entire agreement and understanding between the parties pertaining to the subject matter herein and supersedes any and all prior and/or contemporaneous oral or written agreements and understandings if any, of the parties pertaining to the subject matter herein. No change, alteration, modification or amendment of this Agreement, whether oral, through course of dealings, or otherwise shall be effective or binding unless set forth in a written agreement signed by all the parties.

25. No Inducement

Client acknowledges and agrees that its execution of this Agreement was not induced by, and is not contingent upon, any particular result or outcome of the Claims Audit, any specific identification or recovery of any overpayments or any representations regarding any dollar amount, percentage or probability of the identification or recovery of overpayments unless set forth specifically in this Agreement. Client further agrees that the only representations made by SENECA, its employees, officers, directors or agents that is relying on in entering into this Agreement are those specific representations set forth in this Agreement.

Dated: _____

Client Name: City of Niagara Falls, NY

By: _____

Printed Name: Paul A. Dyster

Title: Mayor, City of Niagara Falls, NY

Dated: _____

Seneca Consulting Group, Inc.

By: _____

Daniel C. Opinante
President

ATTACHMENT A: BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) between Seneca Consulting Group, Inc. (“Business Associate”) and City of Niagara Falls (“Covered Entity”) is effective as of the effective date of the Claims Audit Service Agreement between the parties (“Service Agreement”). For purposes of complying with the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act of the American Recovery and Reinvestment Act of 2009 (“HITECH”) and regulations issued under HIPAA and HITECH, Business Associate and the Covered Entity agree as follows. To the extent Business Associate is acting as a business associate of Covered Entity pursuant to the Service Agreement, the provisions of this Agreement shall apply, and Business Associate shall be subject to the penalty provisions of the HIPAA Rules as specified in 45 CFR Part 160.

1. **Definitions.** Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Rules.

(a) “HIPAA Rules” shall mean privacy, security and breach reporting regulations set forth at 45 CFR Part 160 and Part 164, Subparts A, C, D and E.

(b) “PHI” means Protected Health Information, as defined in the HIPAA Rules, limited to the information created or received by Business Associate from or on behalf of the Covered Entity.

2. **Uses and Disclosures.** Business Associate agrees not to use or disclose PHI other than as authorized by this Agreement or as Required by Law.

(a) Business Associate may use and disclose PHI to provide the services set forth in the Service Agreement, to the extent that such uses and disclosures would not violate the HIPAA Rules. Business Associate may also use PHI to create information that is de-identified in compliance with the HIPAA Rules as necessary to provide such services and to comply with the minimum necessary standard. To the extent Business Associate is to carry out an obligation of Covered Entity under 45 CFR Part 164, Subpart E, Business Associate shall comply with the requirements of 45 CFR Part 164, Subpart C that apply to Covered Entity in the performance of such obligation.

(b) Business Associate may use PHI for the proper management and administration of Business Associate or to carry out its legal responsibilities. Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out its legal responsibilities if the disclosure is Required By Law or if Business Associate obtains reasonable assurance from any person or organization to which Business Associate will disclose such PHI that the person or organization will: (1) hold such PHI in confidence and use or further disclose it only for the purpose for which Business

Associate disclosed it to the person or organization or as Required By Law; and (2) notify Business Associate of any instance of which the person or organization becomes aware in which the confidentiality of such PHI was breached.

(c) Without limiting any uses or disclosures expressly permitted in this Agreement, Business Associate will not sell PHI or use or disclose PHI for purposes of marketing or fundraising, as defined and proscribed in the HIPAA Rules and HITECH.

(d) To the extent covered by the requirements of 45 CFR § 164.502(b), Business Associate shall limit its uses and disclosures of, and requests for, PHI (1) when practical, to the information making up a Limited Data Set, and (2) in all other cases, to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request.

3. **Safeguards.** Business Associate will use appropriate administrative, technical and physical safeguards to prevent the use or disclosure of PHI other than as permitted by this Agreement. Business Associate will also comply with the applicable provisions of 45 CFR Part 164, Subpart C with respect to electronic PHI to prevent any use or disclosure of such information other than as provided by this Agreement.
4. **Reporting.** To the extent known to or discovered by Business Associate, Business Associate will report to Covered Entity, promptly and within the time periods required by applicable law, (a) any use or disclosure of PHI not permitted by this Agreement; (b) any Breach of Unsecured Protected Health Information; and (c) any Security Incidents involving electronic PHI. The parties acknowledge and agree that this section constitutes notice by Business Associate to the Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to the Covered Entity shall be required. "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of electronic PHI. All reports of Breaches shall be made in compliance with 45 CFR § 164.410.
5. **Subcontractors.** In accordance with 45 CFR §§ 164.308(b)(2) and 164.502(e)(1)(ii), Business Associate shall require that its Subcontractors to whom it provides PHI, agree to the same restrictions and conditions that apply to Business Associate with respect to such information.
6. **Mitigation.** Business Associate agrees to attempt to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or

disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

7. **Access.** Business Associate agrees to comply with the Covered Entity's written request to accommodate an Individual's access to his/her PHI in a Designated Record Set maintained by Business Associate as set forth in the HIPAA Rules. In the event an Individual contacts Business Associate for access to his/her PHI, Business Associate agrees to forward promptly the written request to Covered Entity. If the requested PHI is maintained electronically, Business Associate must provide a copy of the PHI in the electronic form and format requested by the individual, if it is readily producible, or, if not, in a readable electronic form and format as agreed to by Covered Entity and the individual.
8. **Amendments.** Business Associate shall make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs. Such amendments shall be made in the time and manner required by 45 CFR §164.526.
9. **Accounting.** Except for disclosures excluded from the accounting obligation by the HIPAA Rules, Business Associate shall document such disclosures of PHI by Business Associate and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528. Business Associate shall provide to the Covered Entity information collected in accordance with this paragraph to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528. In the event the Secretary finalizes regulations requiring Covered Entities to provide access reports, Business Associate shall also record such information with respect to electronic PHI held by Business Associate as would be required under the regulations for Covered Entities beginning on the required compliance date of such regulations.
10. **Books and Records.** Business Associate shall make its internal practices, books and records relating to uses and disclosures of PHI available to the Secretary for purposes of determining the Covered Entity's compliance with the HIPAA Rules.
11. **Return/Destruction.** Upon the termination of this Agreement, Business Associate shall return or destroy all PHI and will retain no copies of such information, unless return or destruction is infeasible. If such return or destruction of PHI is infeasible, Business Associate may continue to maintain such PHI but shall continue to abide by the terms and conditions of this Agreement with respect to such information and shall limit its further use or disclosure of such information to those purposes that make return or destruction of the information infeasible.
12. **Covered Entity's Obligations.** The Covered Entity shall (a) only transmit the minimum PHI necessary to Business Associate to allow Business Associate to

perform the services described in the Service Agreement and for which Covered Entity has all consents and authorizations necessary to permit such disclosure and to permit Business Associate to perform such services; (b) ensure that any Covered Entity policies or notices of privacy practices do not conflict with or limit the ability of Business Associate to perform the services described in the Service Agreement; (c) in the event that Covered Entity agrees to provide additional privacy protections to PHI relating to an Individual, notify Business Associate of such limitations promptly; and (d) in the event that an Individual revokes an authorization or consent given to the Covered Entity that pertains to the use or disclosure of PHI previously transmitted to Business Associate, promptly notify Business Associate of such revocation.

13. Interpretation/Amendment. To the extent that any provision of this Agreement is in conflict with any law, regulation, rule or administrative policy of any governmental entity, the parties will take such actions as are reasonably necessary to amend this Agreement to bring it into conformity with these provisions. In the event of any conflict between this Agreement and the Service Agreement, the terms of this Agreement shall control. This Agreement shall be interpreted in such a manner as to permit the Covered Entity and Business Associate to comply with the HIPAA Rules. Nothing in this Agreement shall be construed to create any rights or remedies in any third parties.

14. Termination. In the event either party breaches the Agreement, the non-breaching party may terminate this Agreement and the Service Agreement immediately if cure is not possible or if the breaching party fails to cure the breach within thirty (30) days of being notified in writing of the breach by the other party. In addition, this Agreement shall automatically terminate upon termination of all of the Service Agreements between the parties. The obligations set forth in Section 11 shall survive any termination or expiration of this Agreement.

WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed on the dates set forth below.

COVERED ENTITY

SENECA CONSULTING GROUP, INC.

By: _____

By: _____

Name: Paul A. Dyster

Name: _____

Title: Mayor, City of Niagara Falls, NY

Title: _____

Date: _____

Date: _____