

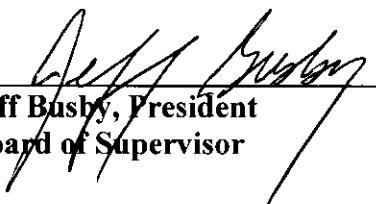
**ORDER:      APPROVE SOUTHERN ADMINISTRATORS' CONTRACT  
FOR THE CAFETERIA PLAN FOR EMPLOYEES**

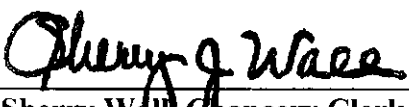
Motion was made by Kevin Frye, duly seconded by David Rikard,  
to approve Southern Administrators' contract for the cafeteria plan for employees.

The vote on the motion was as follows:

Supervisor Kevin Frye, voted yes  
Supervisor Jeff Busby, voted yes  
Supervisor David Rikard, voted yes  
Supervisor Chad McLarty, voted yes  
Supervisor Mike Roberts, absent

After the vote, President Busby, declared the motion carried, this the  
17th day of October, 2016.

  
\_\_\_\_\_  
Jeff Busby, President  
Board of Supervisor

  
\_\_\_\_\_  
Sherry Wall, Chancery Clerk

**LAFAYETTE COUNTY  
CONTRACT FOR PROFESSIONAL SERVICES**

1. **Parties.** This contract (hereinafter referred to as "Contract" and "Agreement") is made and entered into by and between the Lafayette County as "Employer," and "Plan Sponsor" (hereinafter referred to as "Plan Administrator" or "Lafayette County"), and Southern Administrators and Benefit Consultants, Inc., ("SABC") as Service Provider (hereinafter referred to as "SABC").
2. **Purpose.** Lafayette County hereby engages the services of SABC for Lafayette County Flexible Benefit Cafeteria Plan ("the Plan") as defined in Section 125 of the Internal Revenue Code, and SABC hereby agrees to render those certain services described in Paragraph 3, "Scope of Services," below.
3. **Scope of Services.** SABC shall perform and render the following services:

Perform non-fiduciary and fiduciary duties of a service provider to the extent permitted by law, with Plan Administrator retaining ultimate responsibility of the Plan and supervisory authority over SABC. The duties hereunder of SABC shall be to do all things necessary to implement the Plan and ensure compliance with all applicable laws, including but not limited to the following duties:

- A. Inform Lafayette County of employees who are eligible to participate in the Plan and the requirements for participation (subject to the restrictions on participation in the Plan).
- B. Provide all documents and services necessary to implement the Plan, including but not limited to the following:
  1. A Flexible Benefit Cafeteria Plan document that meets the requirements of all state and federal laws, including but not limited to Section 125 of the Internal Revenue Code and subsequent regulations;
  2. An Election and Salary Reduction Agreement (paper or electronic) to be executed by eligible employees in the Plan;
  3. A Summary Plan Description to be copied and distributed to Plan participants by Plan Administrator;
  4. A Business Associate Agreement (Appendix A) intended to comply with the business associate agreement provisions set forth in 45 CFR §164.502(e) & 164.504(e), and any other applicable provisions of 45 CFR parts 160 and 164, subparts A and E, (the "Privacy Rules"), issued pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and HIPAA Security Standards as set forth in 45 CFR Part 160 and Part 164, Subparts A and C.

- C. SABC will conduct an enrollment prior to each Plan Year.
  - D. Advise Plan Administrator of all reporting requirements and prepare for execution, by the Plan Administrator, all reports required to be filed with governmental agencies, including but not limited to, form 5500 and reports required by Section 6039D(a) of the Internal Revenue Code, and subsequent regulations.
  - E. Establish and maintain, with the cooperation of Plan Administrator, a responsible record-keeping system for the Plan that meets the requirements of Section 6039D(b) of the Internal Revenue Code, and/or Section 25-17-1 to 25-17-11 of the Mississippi Code.
  - F. Provide necessary payroll adjustments information to the Plan Administrator, pursuant to the compensation and reduction agreements executed by the participants in the Plan or necessary to meet the discrimination requirements or other limitations under the Plan or the Internal Revenue Code.
  - G. Based on the information provided by the Plan Administrator, SABC will perform all required discrimination testing based on the non-discriminatory standards imposed by the law.
  - H. Establish and maintain, as authorized by the Plan Administrator, a checking account for the deposits and disbursements for the funds under the Plan, when Spending Accounts are adopted.
  - I. Advise Plan Administrator on maintaining compliance with all applicable laws and relevant changes in the law.
  - J. Provide Lafayette County with educational information to be distributed to eligible employees.
  - K. Perform 5500 form filing as and if required by IRS.
  - L. Perform fiduciary duties of a service provider, for adopted Spending Accounts to the extent of collecting and verifying all supporting documentation.
  - M. Provide participants the option of electronic payment, herein referred to as an SABC FlexCard, for allowable expenses in accordance with the Plan Document
4. **Period of Performance.** The Period of Performance of services under this Contract shall begin on **January 1, 2017** and shall end on **December 31, 2019**, for a Three (3) year term. The Period of Performance will automatically be extended as required to complete the coverage periods adopted by the Plan.

This Period of Performance will continue for a one (1) year term, if not terminated under the terms of this Contract, if not superseded by a revised contract.

5. **Consideration and Method of Payment.** During the term of this Contract, Lafayette County will pay SABC at the rate of **\$4.50** per participant\*, per month, a minimum billing of **\$150.00** per month. \*A participant is defined as an employee who signed to participate in Premium Only Plan and/or Dependent Care Spending Accounts and/or Unreimbursed Medical Spending Accounts. Participants in Unreimbursed Medical Spending Account electing to utilize the SABC FlexCard, Lafayette County will pay SABC an additional rate of **\$2.50** per card participant, per month. Payment is due by the 10<sup>th</sup> of each month. SABC will pay all of its own expenses and Lafayette County will not be liable for any of such expenses (except where agreed in advance in writing by the parties), including but not limited to expenses for overhead, copying, printing and hiring additional part-time or full-time employees.
6. **Relationship of Parties.** It is expressly understood and agreed that Lafayette County enters into this contract with SABC based on the purchase of professional services and not based on an employer-employee relationship. For all purposes under this Contract:
  - A. SABC represents that it has, or will secure at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under this Contract. Such personnel shall not be deemed in any way, directly or indirectly, expressly, or by implication, to be employees of Lafayette County.
  - B. Any person employed by SABC to perform the services hereunder shall be the employee of SABC, who shall have the sole right to hire and discharge its employee.
  - C. It is further understood that the consideration expressed herein constitutes full and complete compensation for all services and performances hereunder, and that any sum due and payable to SABC shall be paid as a gross sum with no withholdings or deductions being made by Lafayette County for any purpose from said Contract sum.
  - D. SABC shall pay, when due, all salaries and wages of its employees, and it accepts exclusive responsibility for the payment of Federal Income Tax, State Income Tax, Social Security, Unemployment Compensation and any other withholdings that may be required.
7. **Termination for Cause.** Either party may terminate the Contract for cause by giving thirty (30) days written notice to the other party. Cause shall be defined as follows:
  - A. The breach by either party or its representations or duties under the Contract.
  - B. A determination by any governmental authority or court that the participants in the Plan are taxable on the benefits received pursuant to the Plan or that Lafayette County must make FICA payments on account of such benefits, including, but not limited to, a pre-determination by the Internal Revenue Service that the Plan does not meet the requirements of Section 125 of the Internal Revenue Code.
  - C. The insolvency of either party or the filing of a bankruptcy petition by or on behalf of either party.

- D. The failure of SABC to qualify as necessary in an advisory capacity to the Plan under state or federal regulatory authority,
  - E. The discontinuance of business operations by either party.
8. **Termination of Convenience.** Either Lafayette County or SABC may terminate this Contract at any time by giving written notice to the other party of such termination and specifying the effective date thereof, at least ninety (90) days before the effective date of such termination. Lafayette County agrees to pay SABC pursuant to Section 5, for a period required to complete the coverage period adopted by the Plan.
9. **Ownership and Confidentiality of Documents, Information and Work Products.** All documents, notes, programs, books, data bases (and all applications thereof), files, reports, studies, unfinished documents and/or other materials collected or prepared by SABC specifically at the request and solely for the use of Lafayette County, which information is not of the sort that would be compiled in the ordinary course and scope of SABC's regular business activities, shall be owned by Lafayette County upon completion or termination of this Contract. Lafayette County reserves the right to any and all information and/or materials collected on its behalf.

SABC assures that any and all information regarding employees of Lafayette County will be kept strictly confidential and will become the property of Lafayette County. SABC further assures that Lafayette County shall have full access to all information collected, based on the business associate agreement provisions set forth in 45 CFR §164.502(e) or 164.504(e), and any other applicable provisions of 45 CFR parts 160 and 164, subparts A and E (the "Privacy Rules"), issued pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA").

SABC is prohibited from use of the above described information and/or materials without the express written approval of Lafayette County.

10. **Intentionally Left Blank.**
11. **Confidentiality.** Lafayette County agrees to keep confidential and not to use or to disclose to others during the term of this Contract, except as expressly permitted in writing by Southern Administrators and Benefit Consultants, Inc., terms and provisions of this Contract. It is understood, however, that Lafayette County attorneys, accountants or other agents may review such forms in order to determine whether Southern Administrators and Benefit Consultants, Inc., is meeting its duties under this Contract.
12. **Record Retention and Access to Records.** SABC shall maintain, and shall make available to Lafayette County, any state or federal agency authorized to audit Lafayette County, or any duly authorized representatives, financial records, supporting documents, statistical records and all other records pertinent to the services performed under this Contract. These records shall be maintained for such period as required to correspond with applicable statutes of limitation imposed by State and Federal law; however, if any litigation or other legal action, by or on behalf of the State or Federal Government has begun that is not completed, or if

audit findings litigation or other legal action has not been resolved at the end of the period, the records shall be retained until resolution. Unless requested by Lafayette County, records will be destroyed after the period required by State and Federal law, unless terminated by paragraphs 7 & 8. Should this Contract terminate, pursuant to paragraphs 7 or 8, all records must be recovered at SABC's place of business (during business hours) within ninety (90) days of the effective date of termination. Except as stated above, SABC is released from all record keeping liability after ninety (90) days from the date of termination of this Contract.

13. **Modification or Amendment.** Modifications, changes, or amendments to this Contract may be made upon mutual agreement of the parties, in writing and signed by the parties hereto.
14. **Assignment.** SABC may not assign or otherwise transfer its obligations or duties under this Contract without the prior written consent of Lafayette County. Any attempt to assign or transfer the obligations and duties hereunder without such consent shall be void.
15. **Waiver.** Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power thereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Contract.
16. **Indemnification.** "To the fullest extent allowed by law, SABC shall indemnify, defend, save and hold harmless, protect, and exonerate the Employer, its officers, employees, agents, and representatives, from and against all claims, demands, liabilities, suits, actions, damages, fines, penalties, excise taxes, expenses, losses and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, and claims for damages arising out of or caused by SABC and/or its partners, principals, agents, employees and/or subcontractors in the performance or failure to perform this Agreement." SABC shall be liable under this paragraph only for damages due in whole or in part to its own acts or omissions or the acts or omissions of its officers, agents or employees. SABC shall not be liable under this paragraph for any Damages due exclusively by the acts or omissions of the Lafayette County, its agents or employees. SABC shall assume the defense and settlement of any lawsuits, administrative actions or other legal proceedings brought to collect such Damages and shall pay all judgments entered in such legal proceedings and expenses of such proceedings. The paragraph and the obligations herein shall continue in full force and effect notwithstanding the termination of this Contract, whether by expirations of time, operation of law, action by either party or otherwise.
17. **Insurance.** SABC represents that it meets the requirements of "Miss. Code Ann. Section 25-17-1 through 25-17-11" of the Mississippi Code.
18. **Governing Law and Legal Remedies.** This Contract shall be governed by and construed in accordance with the laws of the State of Mississippi. If either party to this Contract brings or participates in an action in court or before an administrative body to enforce or interpret any part or all of this Contract against the other party, each party agrees to pay its expenses incurred in enforcing this Contract and the judgment, including but not limited to, all attorney's fees at a trial and on appeal.

19. **Severability.** If any term or provision of this Contract is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Contract shall not be affected thereby and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
20. **Disputes.** This Contract shall be governed by and construed in accordance with the laws of the State of Mississippi. Any action, suit or proceeding brought by, or on behalf of either party under this Contract, in whole or in part, shall be brought in Madison County, Mississippi.
21. **Compliance with Laws.** SABC shall comply with all applicable laws, regulations, policies and procedures and Grant requirements (if applicable) of the United States of America or any agency thereof, the State of Mississippi or any agency thereof and any local governments or political subdivisions that may affect the performance or services under this Contract. Specifically, but not limited to, SABC shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this Contract because of race, religion, color, sex, age, national origin or disability.

a. **Compliance with Mississippi Employment Protection Act (MEPA):** Contractor/Seller represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act (Senate Bill 2988 from the 2008 Regular Legislative Session) and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Contractor/Seller by a Division, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

b. **Transparency.** In accordance with the Mississippi Accountability and Transparency Act of 2008, *Miss. Code Ann.* 27-104-151 *et seq.*, the American Accountability and Transparency Act of 2009 (P.L. 111-5), where applicable, and *Miss. Code Ann.* §31-7-13, where applicable, a fully executed copy of this agreement shall be posted to the State of Mississippi's accountability website at: <https://merlin.state.ms.us>.

22. **Entire Agreement.** This Contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior

negotiations, understandings and agreements, written or oral, between the parties relating thereto.

23. **Special Terms and Conditions.** It is agreed and understood by each party to this Contract that the Lafayette County agrees to cooperate with SABC to the extent permitted by law, including but not limited to providing SABC necessary payroll information to the extent needed by SABC to perform its duties.
24. **Notice.** Any notice required or permitted to be given under this Contract shall be in writing and sent by United States Certified Mail, Return Receipt Requested, to the party to whom the notice should be given at the address set forth below:

**COMPANY:** LAFAYETTE COUNTY  
Lisa Carwyle, County Administrator  
P O Box 1240  
Oxford, MS 38655

**SERVICE PROVIDER:** SOUTHERN ADMINISTRATORS  
AND BENEFIT CONSULTANTS, INC.  
Nelson Morrison, President  
P.O. Box 2449  
Madison, MS 39130-2449

Each party agrees to notify the other promptly in the event of an address change.



## APPENDIX A

### HEALTH INSURANCE PORTABILITY ACCOUNTABILITY ACT (HIPAA) PRIVACY RULES BUSINESS ASSOCIATE AGREEMENT

**THIS BUSINESS ASSOCIATE AGREEMENT** (the "Agreement"), effective **January 1, 2017**, by and between Lafayette County (hereinafter referred to as "Plan Administrator"), for the Flexible Benefit Cafeteria Plan, maintained under; and as part of the Lafayette County Flexible Benefit Cafeteria Plan ("the Plan") with Southern Administrators and Benefit Consultants, Inc. (hereinafter "SABC"), as Service Provider for the Plan Administrator, is incorporated into and made a part of the Agreement for Professional Services, ("Contract"), between SABC and Lafayette County.

This Agreement is intended to comply with the business associate agreement provisions set forth in 45 CFR §164.502(e) and §164.504(e), and any other applicable provisions of 45 CFR Parts 160, and Part 164, subparts A and E (the "Privacy Rules"), issued pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), and HIPAA Security Standards for the Protection of Electronic Protected Health Information ("EPHI") as set forth in 45 CFR Part 160 and Part 164, Subparts A and C, and the provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act of 2009, and last amended January 17, 2013, final September 23, 2014, by the U.S. Department of Health and Human Services, (HHS) and the Omnibus regulations under the Health Insurance Portability and Accountability Act (HIPAA), including the Health Information Technology for Economic and Clinical Health Act (HITECH), (the final rule), and whenever used in this agreement, other capitalized terms not defined herein, shall have the same respective meaning set forth as those terms defined in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosures, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, and Use, unless a different meaning shall be clearly required by the context.

#### Specific definitions:

(a) A "business associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement with the covered entity, shall mean SABC. A "business associate" is a person or entity, or subcontractor, other than a member of the workforce of a covered entity, who performs certain functions or activities on behalf of, or provides certain services to a covered entity that involves access by a business associate to Protected Health Information (PHI), that creates, receives, maintains, or transmits PHI. This includes functions or activities of a person or entity that they may undertake on behalf of a covered entity, or business associate of a covered entity, that gives rise to a business associate relationship, and shall include three additional categories of service providers; such as health information organizations, persons or entities providing data transmission services to a covered entity, or who may provide PHI records on behalf of a covered entity; subcontractors that create, produce, receive, maintain, or transmit PHI on behalf of a covered entity, or on behalf of business associates of a covered entity. These may include, but are not limited to: A data storage company, document storage company, researcher, a person creating a de-identified or limited data set for a covered entity or business associate, a transmission service or health type vendor, or as determined based on the facts and

circumstances surrounding their duties and responsibilities to a covered entity, regardless of whether the vendor actually exercises access to PHI, it services, is a business associate.

(b) A "covered entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Lafayette County.

(c) "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

(d) "Protected Health Information" (PHI) PHI shall have the meaning given to such term in 45 CFR § 164.501, limited to the information created or received from the Plan or on its behalf, by SABC.

SABC recognizes that in the performance of Cafeteria Plan services for the Plan under this Agreement with Lafayette County, SABC will have access to; create, and/or receive general and electronic PHI information, as defined at 45 CFR § 160.103. As a business associate of Lafayette County, SABC shall comply with the HIPAA Rules as follows:

## **SECTION 1. SABC RESPONSIBILITIES**

1.1 SABC, as a Business Associate, agrees not to use or disclose PHI other than as permitted or required by law, or this Agreement. SABC shall use or disclose PHI as follows:

- a. Perform functions, activities, or services for, or on behalf of, the Plan, as specified in this Agreement.
- b. May use PHI for the proper management and administration of the Plan or to carry out the legal responsibilities of SABC.
- c. May use PHI to provide Data Aggregation services to Plan as permitted by 42 CFR § 164.504(e)(2)(i)(B).
- d. May use PHI to report violations of law to appropriate Federal and State authorities, consistent with 42 CFR § 164.502(j)(1).
- e. May use and disclose PHI that has been de-identified within the meaning of 45 CFR § 164.514.
- f. May use and disclose PHI to a person(s), entities, vendors, organizations, or service providers for or on behalf of the Plan, if there service is to perform a function, activity, or service for SABC or the Plan.

1.2 SABC agrees to implement appropriate administrative, physical and technical safeguards that comply with Subpart C of 45 CFR Part 164 that shall reasonably and appropriately protect the confidentiality, integrity, and availability of general and electronic PHI that it creates, receives, maintains or transmits on behalf Lafayette County. SABC shall prevent the use or disclosure of

PHI other than as provided by this Agreement, and shall maintain uses of technologies and methodologies that render PHI unusable, unreadable, indecipherable or de-identified to unauthorized individuals, including security, encryption and enforcement of data protection.

- 1.3 SABC agrees to use reasonable efforts to maintain the security of PHI and to prevent unauthorized uses or disclosures of such PHI, as well as, alert Lafayette County of any security incident of which it becomes aware, including any breach of secure or unsecured PHI, and provide breach notifications to the Plan and the individuals affected, of which it becomes aware as required by 45 CFR 164.410
- 1.4 SABC agrees to only request, use or disclose the minimum amount of PHI necessary to accomplish the purpose of the request, or service to or for the Plan.
- 1.5 SABC in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, agrees to ensure that any agent, including a subcontractor, to whom it provides PHI that was created, received, maintained or transmitted on behalf of SABC, or on behalf of Lafayette County for the Plan, agrees to the same restrictions, conditions, and requirements that apply to a business associate with respect to such information.
- 1.6 SABC agrees to make any amendment(s) and to provide access to PHI in a Designated Record Set that the Plan directs or agrees to, pursuant to 45 CFR § 164.526, at the request of the Plan or an Individual, and in the time and manner designated by the Plan, and take other measures as necessary to satisfy the Plan's obligation under 45 CFR § 164.526 and 164.524
- 1.7 SABC agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from, or created by SABC on behalf of the Plan, available to the Plan, or at the request of the Plan, to the HHS Secretary (as defined in 45 CFR § 160.103), in the time and manner designated by the Plan, or the Secretary, for purposes of the Secretary determining the Plan's compliance with the HIPAA Rules.
- 1.8 SABC agrees to document such disclosures of PHI and information related to such disclosures as would be required for the Plan to respond to a request by an Individual for an accounting of disclosures of PHI, in accordance with 45 CFR § 164.528.
- 1.9 SABC shall maintain the privacy of the employees PHI, and electronic protected health information, (EPHI), by using technologies and methodologies that render the EPHI or PHI, unusable, unreadable, indecipherable or de-identified to unauthorized individuals. The Plan shall render all PHI unusable, unreadable, indecipherable or de-identified to unauthorized individuals by using the required destroying methods, and/or transmission encryption required.
- 1.10 SABC shall, following the discovery of a breach of unsecured PHI as a business associate, notify the Plan Administrator of the breach so that, the Plan Administrator will, in turn, notify all the affected individuals. To the extent possible, as a business associate, SABC shall identify each individual whose unsecured PHI has been, or is reasonably believed to have been, breached. Such notice shall be given without unreasonable delay and no later than sixty (60) days following discovery of a breach and/or based on the number of affected individuals, SABC will adhere to requirements of posting notice by web sites, and/or media, and/or HHS. With the exception of a

delay if a law enforcement official determines that such notification would impede a criminal investigation or cause damage to national security.

- 1.11 SABC agrees to provide to the Plan or participants, or beneficiaries (in the time and manner designated by Plan), information collected in accordance with 1.8 to permit the Plan to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. However, SABC will not agree to any special privacy restrictions, other than as outlined in this Agreement.
- 1.12 Except as provided for herein, or as required by law, upon termination of the Agreement, SABC agrees to return to the Plan or destroy PHI and retain no copies in any form, if feasible. In the event that SABC determines that returning or destroying the PHI is infeasible, SABC shall notify the Plan of the conditions that make returning or destruction infeasible. SABC agrees to extend the protections, limitations and restrictions of this Agreement to such PHI and to limit any further uses and/or disclosures of such PHI retained to the purposes that make the return or destruction of the PHI infeasible, for as long as SABC maintains such PHI. Both parties agree that this Section 1.12 shall survive the expiration or termination of this Agreement and remain in full force and effect thereafter for as long as SABC or any of SABC's employees remains in possession of any PHI.
- 1.13 SABC agrees to adhere to HIPAA's Privacy, Security, and Enforcement Rules, including Section 105 of Title I of the Genetic Information Nondiscrimination Act of 2008 (GINA). To the extent as a business associate, SABC is to carry out one or more of the Plan's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity Lafayette County in the performance of such obligation(s), in service to the Plan.
- 1.14 SABC authorizes termination of this agreement by Lafayette County if the Lafayette County determines that SABC has violated a material term of this Appendix.

## **SECTION 2. PLAN AND PLAN ADMINISTRATOR RESPONSIBILITIES**

- 2.1 Plan Administrator acting as the Plan Sponsor of Lafayette County, agrees to comply with the requirements set forth in 45 CFR § 164.504(f), including but not limited to amending the Plan, if necessary to restrict uses and disclosures of PHI. The Plan Administrator agrees to forward a copy of such amendments to SABC at least ten (10) business days before the effective date of such amendments. SABC agrees to provide Plan Administrator with any amendments necessary to comply with this Section with regard to Plan documents provided by SABC to Plan Administrator for adoption. The Plan Administrator further agrees to provide the names of employees or agents who have access to PHI in accordance 45 CFR § 164.504(f), and to notify SABC of any changes in writing.
- 2.2 Plan Administrator agrees that it will not request SABC to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules, except that SABC may use or disclose PHI as provided in Section 1.1.
- 2.3 Plan Administrator agrees to provide Plan participants, and beneficiaries with adequate notice of

the uses and disclosures of PHI that may be made by the Plan, and of the individual's rights and the Plan's responsibilities with respect to PHI as required in 45 CFR § 164.520. The Plan further agrees to forward a copy of such notice to SABC, as well as any changes to such notices.

- 2.4 Plan Administrator agrees to provide SABC with any changes or any request or revocation of, permission by a participants or beneficiaries to use or disclose PHI, if such changes affect SABC's permitted or required uses or disclosures.
- 2.5 Plan Administrator agrees it will not agree to any special privacy restrictions requested by a participants, and beneficiaries for the Plan, without SABC's written approval, including those provided for 45 CFR § 164.522.
- 2.6 Plan Administrator agrees to indemnify and hold harmless SABC, from any and all liabilities, fines, penalties, expenses, costs, attorney's fees and other damages arising out of the failure of Plan Administrator, Plan Sponsor or its employees, to comply with the provisions of this Agreement or HIPAA Rules.

### SECTION 3. MISCELLANEOUS

- 3.1 Both parties agree that nothing expressed or implied in this Agreement is intended to confer, shall anything herein confer, upon any person other than SABC, the Plan, the Plan Administrator, and the Plan Sponsor, their respective successors, or assigns any rights, remedies, obligations, or liabilities whatsoever.
- 3.2 This Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA Rules, and any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Privacy Rules. Both parties agree that the provisions of this Section shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provisions of this Section.
- 3.3 Both parties acknowledge that future changes to the requirements of HIPAA Rules, and other applicable laws relating to the security or confidentiality of PHI may require amendment of this Agreement. Upon the written request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Agreement. If either party disagrees with any such amendment, it shall so notify the other party in writing within thirty (30) days of notice. If the parties are unable to agree on an amendment within thirty (30) days thereafter, then any of the parties may terminate the Agreement on thirty days written notice to the other party or in accordance with Section 7 of the Agreement.
- 3.4 Notwithstanding Section 3.3 above and without limiting the rights of the parties under the Agreement, upon written notice of the existence of an alleged material breach of the terms of this Agreement, the Plan Administrator shall afford SABC an opportunity to cure said breach upon mutually agreeable terms. Failure to cure shall be immediate grounds for termination of the Agreement.
- 3.5 SABC agrees to indemnify and hold harmless Lafayette County, the Plan and Plan Administrator