



REQUEST FOR BOARD ACTION

ITEM NO. 6.

DATE OF MEETING: October 20, 2014

REQUESTED BY: Denise Mulhollen, HR Director

SHORT TITLE: Resolution Authorizing Approval of Wellness Contract with Healthstat, Inc. for Fiscal Year 2014-2015: \$45,696.79.

BACKGROUND: Healthstat, Inc. is the industry leading provider of onsite primary care, health-risk intervention, chronic care management and occupational medicine. They create an environment of wellness that works by offering solutions that improve employee health while lowering costs. Healthstat takes a proactive approach to improving employee health and wellness, lowering healthcare costs, decreasing absenteeism and increasing productivity. From health-risk assessments to wellness training and nutrition, they work to create an environment that encourages better decisions, healthier employees and a healthier bottom line.

Healthstat partnered with Pender County in September, 2013, offering assistance by gathering, compiling, analyzing and reporting personal health information for each participating employee. Healthstat conducts annual health risk assessments, provides one-on-one quarterly health educator sessions, a total of twelve (12) health education seminars per year and participates in quarterly wellness committee meetings. Data from the assessments will be forwarded to Pender County management and ultimately to the Board for comparison of the previous year to current year to show the overall savings and health results.

SPECIFIC ACTION REQUESTED: To consider a resolution to approve the Healthstat Inc. Health Risk Assessment Agreement for \$45,696.79 for fiscal year 2014-2015.

COUNTY MANAGER'S RECOMMENDATION

Respectfully recommend approval.

RM
Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:

the Board hereby authorizes Healthstat, Inc. to provide health and wellness assessment services for the County. The Chairman/County Manager/Interim County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS _____

YEA VOTES: Williams ___ McCoy ___ Brown ___ Tate ___ Ward ___

J. David Williams, Jr., Chairman 10/20/14
Date

ATTEST 10/20/14
Date

HEALTH RISK ASSESSMENT AGREEMENT

This Health Risk Assessment Agreement ("Agreement") is made and entered into as of the 20th day of October, 2014 by and between Healthstat, Inc., a North Carolina Corporation ("HS") and Pender County Government ("Employer"), acting on behalf of the Pender County health plan ("Plan"). All references to Employer in this Agreement shall be deemed to refer to it as acting in its capacity as Plan Administrator or on behalf of the Plan.

RECITALS

WHEREAS, Employer conducts business in the state(s) of NC (states where health risk assessments are to be performed) and is headquartered with its principal offices located in Burgaw, NC; and

WHEREAS, Employer desires to reduce Plan healthcare costs for its employees while improving the overall health of its employees, and is therefore entering into this Agreement for the Plan; and

WHEREAS, HS has offered to assist Employer by gathering, compiling, analyzing and reporting personal health information for each participating employee of Employer ("HRA") and by providing other value-added services, all designed to assist Employer in reducing Plan health care costs and decreasing lost productivity due to illness-related absences ("Benefits"); and

WHEREAS, Employer desires to contract with HS to conduct an HRA event on Employer's premises; and

WHEREAS, HS has agreed to conduct an HRA on Employer's premises and to provide other services as set forth in this Agreement; and

WHEREAS, HS has made Employer aware, and, Employer acknowledges the success and effectiveness of the services offered by HS in achieving Benefits is greatly dependent upon the support and assistance Employer provides HS regarding educating and participation of Employer's workforce, allowing sufficient hours of operation and providing suitable premises for performing the HRA.

NOW, THEREFORE, in consideration of the mutual premises, promises, covenants and conditions contained herein, and as hereinafter set forth, the parties agree as follows:

HRA Services: HS shall inform Employer's workforce about the make up and benefits of an HRA through group education sessions planned in consultation with the Employer. Each employee shall be given a health questionnaire ("Health and Wellness Questionnaire") to be completed.

HS shall collect the blood pressure, height and weight from each participant. HS shall obtain a blood specimen from each employee participant on whom a lipid panel,

glucose laboratory screening and prostate screening antigen test (if indicated and as described in the Section titled HRA Cost) will be run.

HS shall mail the results to each participant screened, provide a report to Employer reflecting the results of the screening on a de-identified, aggregate basis, and, upon request, provide a risk stratification report to the Employer's group health plan.

Reports: HS shall produce the following reports, some of which shall be for Employee and/or Employer and/or Employer's group health plan if requested, as designated by Employer, as well as such other reports as Employer may request and HS agrees to produce. The form and substance of additional requested reports shall be as mutually agreed to by HS and Employer and may require additional costs to Employer. All reports shall be distributed in accordance with the Health Insurance Portability and Accountability Act of 1996 as Amended (HIPAA).

- i. Individual health profiles for assessment participants shall be compiled and distributed to each participant.
- ii. Aggregate health risk report(s) for the entire participant population assessed on a de-identified basis shall be compiled and distributed to Employer.

No Personal Health Information contained in reports generated by HS shall be released to Employer except in a de-identified format without the prior written consent of the individual(s) or in accordance with HIPAA.

Appointment of Account Manager: HS shall appoint an Account Manager and provide the name and contact information of the Account Manager to Employer within ten (10) days of the date this Agreement is executed. The Account Manager will be responsible for overseeing the implementation of this Agreement and review of the reports generated from the HRA.

Explanation of Services and Fees:

Service Description	Pricing
Health Risk Assessment	\$ 42.00 per participant
Additional Testing - CMP	\$10.50 per participant
Total HRA Costs for 369 Participants	\$19,372.50
Healthstat Telephone Scheduling Line	\$.60 per participant per Quarter
Total Annual Costs for 369 Participants	\$885.60
Quarterly On-Site Health Coaching	
Total Annual Coaching Cost to Include:	\$25,438.69
<ul style="list-style-type: none"> • 15 Minute Appointments Each Quarter • 3 Nutrition Classes Each Quarter 	
Total Program Cost	\$45,696.79

- i. The HRA event is scheduled for Tuesday September 16th through Friday September 19th 2014.
- ii. Following the HRA event, a health coach will be on site each quarter for one year to conduct individual health coaching sessions with HRA participants. Visits will occur in October, January, April, and July. Appointments with the health coach will occur every 15 minutes while the health coach is on site each quarter.
- iii. Employees will be scheduling their appointments with the health coach by calling into the Healthstat scheduling line.
- iv. The health coach will be scheduled for one hour to participate in the Pender County Wellness Committee meeting each quarter. Pender County will provide a 30 day notice of the event in advance. *Wellness meeting dates, times and frequency will be at the discretion of Employer.*
- v. The health coach will provide three 1 hour group education sessions during the week(s) they are on site each quarter, for a total of 12 education sessions for a year.
- vi. HS will bill Coaching Sessions, nutrition classes, and the telephonic scheduling line on a quarterly basis.
- vii. The medical information release will include authorization to provide the HRA and biometric data to the County's third party administrator. The TPA will provide HS educators summary information about their case management activities with program participants;
- viii. Prostate Specific Antigen (PSA) test shall be performed on all adult males age 40 or older at an additional cost of \$28.00 per test.

YES

NO

Employer shall remit payment of the balance due within thirty (30) days of receipt of invoice issued by HS. In the event that payment is not received by HS within thirty (30) days of the date of the invoice, a late payment penalty in the amount of one and one-half percent (1 1/2%) per month shall accrue on the unpaid balance for each month or fraction thereof payment is late.

Electronic Data Sharing: Employer shall supply the demographic data listed in Exhibit A for its Employees to be included in the HRA in electronic format compatible with HS software systems in order to populate the HS database. This delivery of data shall be completed within forty-five (45) days of the date of this Agreement, but no less than 30 days prior to the scheduled HRA. All data transmitted pursuant to this section

must be in electronic non-facsimile format, i.e. CD, floppy disk or direct electronic interface.

Premises and Support Services of Employer:

Premises. Employer shall provide HS with the right of access to the premises provided by Employer to hold the HRA.

Contact Person for Scheduling. Employer shall be responsible for scheduling all participants for the HRA.

Privacy and Security of Employee Health Information.

i. HS and Employer acknowledge and agree that some of the services provided under this Agreement may involve the sharing of protected health information ("PHI" as defined under 45 C.F.R. § 164.501) of Employer's workforce. HS agrees to maintain the privacy of such information in accordance with the business associate provisions set forth under the Privacy Regulations adopted by the United States Department of Health and Human Services pursuant to HIPAA. In furtherance thereof, HS and Employer agree to execute the Business Associate Agreement, attached as Exhibit "B", and incorporated herein by reference.

ii. The parties agree to revise this Agreement and the BAA as necessary in order to comply with current or additional regulations adopted pursuant to HIPAA.

Confidentiality of Information.

Upon termination of this Agreement, each party agrees to return to the other all proprietary information of the other party in their possession including, without limitation, any documentation evidencing Employer's or HS' policies and procedures, or, give written assurances of its destruction.

Limits of Liability.

HS agrees to indemnify, defend, and hold harmless Employer against any claims and/or damages of whatever nature resulting from any negligent act or omission of HS.

No action, regardless of form, arising out of any transaction under this Agreement may be brought by either party more than one (1) year after the injured party has actual knowledge of the occurrence which gives rise to the cause of such action.

Consents. Any consent required or any discretion vested in a party to this Agreement shall not be unreasonably withheld or arbitrarily or capriciously exercised.

Governing Law. This Agreement shall be interpreted according to the laws of the State of North Carolina. The sole venue for any legal action shall be state court in Pender County, NC. -DM Also, adherence to E-verify. -DM

Notices. All notices and other communications required or permitted under this Agreement shall be effective upon receipt or rejection. Any notice shall be delivered to the parties as follows:

Employer: Pender County Government

Attn: Denise Mulhollen
Address: 805 South Walker Street
Burgaw, NC 28425
910-259-1200

HS: Healthstat, Inc.
4651 Charlotte Park Dr., Suite 300
Charlotte, NC 28217
Fax: 704-529-6572
Attn: Warren Hutton, General Counsel

Severability Clause. In the event any term or provision of this Agreement is found to be unenforceable or void, in whole in part, as drafted, then the offending term or provision shall be construed as valid and enforceable to the maximum extent permitted by law, and the balance of this Agreement shall remain in full force and effect.

Amendments. Amendments may be made to this Agreement but only after the mutual approval in writing by Employer and HS.

Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party, which consent shall not unreasonably be withheld.

Waiver. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any such party's rights with respect to any subsequent breach thereof.

Entire Agreement. This Agreement supersedes all previous contracts and constitutes the entire agreement between the parties. HS and Employer shall be entitled to no benefit other than those specified herein. No oral statements or prior written material not specifically incorporated herein shall be of any force and effect and no changes in or additions to this Agreement shall be recognized unless and until made in writing signed by all parties hereto.

Attorney's Fees. The parties agree that should the services of an attorney at law be engaged by HS in order to collect sums due HS under this Agreement, then Employer shall be obligated to pay the same. *The parties agree that should the services of an attorney at law be engaged by Employer in order to collect sums due Employer under this agreement, then HS shall be obligated to pay the same.*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set out above.

Pender County Government

Healthstat, Inc.

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: Susan C. Kinzler

Title: CFO & Executive Vice President

Date: _____

LIST OF EXHIBITS:

Exhibit "A": Electronic Data Sharing

Exhibit "B": Business Associate Agreement

EXHIBIT "A":
Electronic Data Sharing

Following are the elements the employer is required to provide to Healthstat as described in this Agreement.

Demographic Data File Requirements

Below are the general guidelines for creating two separate files for all eligible employees and for all eligible dependents in the program. A dependent file is not necessary if dependents are not eligible for the program.

1. Create a tab-delimited text file or an Excel workbook file with the fields in the indicated order. Please use the column header names exactly as specified.
2. Populate all required fields, even if the value is the same for all records – e.g. "CompanyName," "PlantName," or "PlantLocation."
3. For optional fields that will not be populated, include the empty column(s) with the column header(s).
4. Please format data fields as indicated, using only alphanumeric characters, numbers, or numbers plus the special characters listed in the Field Format specified. For example, do not use parentheses in the "Hphone" and "Wphone" columns. Do not use hyphens in the "DOB," "HireDate," and "TermDate" columns.
5. Send complete files monthly through your secured email site or Ftp/SFTP connection. Healthstat would be happy to set you up an account on our SFTP server. If this is your preference please send an email request to data@Healthstatinc.com.

File naming conventions and field definitions follow.

I. Employee File:

Description	Comment	Requirement	Field Format
CompanyName	Company Name	Required	Alphanumeric Max Size: 50 characters
LastName	Employee Last Name	Required	Alpha Characters; do not include suffix Max Size: 50 characters
FirstName	Employee First Name	Required	Alpha Characters Max Size: 50 characters
MiddleName	Employee Middle Name or Initial	Optional	Alpha Characters Max Size: 50 characters
Suffix	Employee Name Suffix	Optional	Alphanumeric Max Size: 10 characters (ex: Jr, Sr, II, III, 2nd)
SSN	Employee Social Security Number	Required	Alphanumeric (numbers and hyphens only) Max Size: 15 characters (ex: 123-45 6789)
DOB	Employee Date of Birth	Required	Alphanumeric (numbers and slashes only) Max Size: 10 Characters (mm/dd/yyyy ex: 01/21/1956)
Gender	Employee Gender	Required	M or F Max Size: 1 character
Position Status	Current Employee Status	Required	Alphanumeric list: Active, Coltd, Layoff, Leave, No Child, Other, Retired, Temporary, Terminated Only Max Size: 15 characters
Address1	Employee Home Address Line 1	Required	Alphanumeric Max Size: 50 characters
Address2	Employee Home Address Line 2	Optional	Alphanumeric Max Size: 50 characters

Description	Comment	Requirement	Field Format
City	Employee City	Required	Alphanumeric Max Size: 50 characters
State	Employee State	Required	Alphanumeric Max Size: 2 characters
Zip	Employee Zip Code	Required	Alphanumeric (numbers and hyphen only, 5 or 9 digit zip codes) Max Size: 10 characters (ex: 12345 or 12345-6789)
Hphone	Employee Home Telephone Number	Required	Alphanumeric (numbers, '-', 'x' if extension) Max Size: 50 characters (ex: 123-456-7890 x1234)
Wphone	Employee Work Telephone Number	Optional	Alphanumeric (numbers, '-', 'x' if extension) Max Size: 50 characters (ex: 123-456-7890 x1234)
PlantName	Plant Number or Name of Employee's Work Location	Required	Alphanumeric Max Size: 50 characters
PlantLocation	City of Employee's Plant Work Location	Required	Alphanumeric Max Size: 50 characters
HireDate	Employee Date of Hire	Required	Alphanumeric (numbers & slashes only) Max Size: 10 Characters (mm/dd/yyyy ex: 01/21/1956)
TermDate	Date of Employee Termination	Required (if Position Status = Terminated)	Alphanumeric (numbers & slashes only) Max Size: 10 Characters (mm/dd/yyyy ex: 01/21/1956)
CustomerMemberID	Employee's unique insurance identifier # if other than SSN #	Optional* (*if = SSN)	Alphanumeric Max Size: 15 characters
CustomerEmployeeID	Employee's unique identifier # within the company	Optional	Alphanumeric Max Size: 15 characters

InsPlanElectionCode	Insurance Plan Election	Optional	Alphanumeric MaxSize: 10
HomeWorker	Remote Employee Indicator	Optional	Alpha Y or N Max Size: 1
Wellness	Enrolled in Wellness Program	Optional	Alphanumeric Max size: 25

II. Dependent File:

Description	Comment	Requirement	Field Format
Company Name	Company Name	Required	Alphanumeric Max Size: 50 characters
Last Name	Dependent Last Name	Required	Alpha Characters, do not include suffix Max Size: 50 characters
First Name	Dependent First Name	Required	Alpha Characters Max Size: 50 characters
Middle Name	Dependent Middle Name or Initial	Optional	Alpha Characters Max Size: 50 characters
Suffix	Dependent Name Suffix	Optional	Alphanumeric Max Size: 10 charaters (ex: Jr, Sr, II, III, 2nd)

Description	Comment	Requirement	Field Format
SSN	Dependent Social Security Number	Required	Alphanumeric (numbers and hyphens only) Max Size: 15 characters (ex: 123-45-6789)
DOB	Dependent Date of Birth	Required	Alphanumeric (numbers and slashes only) Max Size: 10 Characters (mm/dd/yyyy ex: 01/21/1956)
Gender	Dependent Gender	Required	M or F Max Size: 1 character
RelationCode	Relationship To Employee	Required	Alphanumeric Max Size: 10 characters (Spouse, Child, or Other)
RespPartySSN	Employee's Social Security Number	Required	Alphanumeric (numbers and hyphens only) Max Size: 15 characters (ex: 123-45-6789)
RespPartyEmployeeID	Employee's unique EmployeeID	Optional (unless EmployeeID is key identifier)	Alphanumeric Max Size: 15 characters
RespPartyMemberID	Employee's unique MemberID	Optional (unless MemberID is key identifier)	Alphanumeric Max Size: 15 characters
Address1	Dependent Home Address Line 1	Optional if same as employee	Alphanumeric Max Size: 50 characters
Address2	Dependent Home Address Line 2	Optional	Alphanumeric Max Size: 50 characters
City	Dependent City	Optional if same as employee	Alphanumeric Max Size: 50 characters
State	Dependent State	Optional if same as employee	Alphanumeric Max Size: 2 characters
Zip	Dependent Zip Code	Optional if same as employee	Alphanumeric (numbers and hyphen only, 5 or 9 digit zip codes) Max Size: 10 characters (ex: 12345 or 12345-6789)
Hphone	Dependent Home Telephone Number	Optional if same as employee	Alphanumeric (numbers, '-', 'x' if extension) Max Size: 50 characters (ex: 123-456-7890 x1234)
Wphone	Dependent Work Telephone Number	Optional	Alphanumeric (numbers, '-', 'x' if extension) Max Size: 50 characters (ex: 123-456-7890 x1234)
CustomerMemberID	Dependent's unique Insurance Identifier # if other than SSN #	Optional* (*if = SSN)	Alphanumeric Max Size: 15 characters

Claims Data File Required Elements

Claims data files should be fixed-length text files. Headers are not allowed. If delimited files are used instead, a column header record is required. Please send documentation of your **file layout** and any definitions/descriptions/formulas. Data should be in **HIPAA-compliant** format wherever possible.

Covered entities under HIPAA are health care clearinghouses, certain health care providers, and health plans. A "group health plan" is one type of health plan and is a covered entity (except for self-administered plans with fewer than 50 participants). The group health plan is considered to be a separate legal entity from the employer or other parties that sponsor the group health plan. Neither employers nor other group health plan sponsors are defined as covered entities under HIPAA.

EXHIBIT "B":

BUSINESS ASSOCIATE AGREEMENT

This Agreement is made effective _____, 2014 (the "Effective Date") between **Pender County Government** ("Covered Entity"), and **Healthstat, Inc.** ("Business Associate"). The parties referenced above may be referred to individually as "Party" and collectively as "Parties."

WITNESSETH

WHEREAS, the Parties wish to enter into or have entered into an agreement whereby Business Associate will provide certain healthcare services to Covered Entity ("Services Agreement");

WHEREAS, pursuant to such Services Agreement, Business Associate may be considered a "business associate" of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA");

WHEREAS, Business Associate may have access to Protected Health Information and Electronic Protected Health Information (each as defined below) in fulfilling its responsibilities and obligations under such Services Agreement;

WHEREAS, HIPAA establishes certain obligations for a covered entity under regulations known as the Privacy Rules ("Privacy Rules") and the Security Rules ("Security Rules") when a business associate has access to Protected Health Information and Electronic Protected Health Information of the Covered Entity;

WHEREAS, Title XII of Division A and Title IV of Division B, called the "Health Information Technology for Economic and Clinical Health ("HITECH") of the American Recovery and Reinvestment Act of 2009" expand on the mandates of the Privacy Rules and the Security Rules (all references herein to the Privacy Rules and the Security Rules are deemed to include all amendments to such rule contained in HITECH and any accompanying regulations, and any other subsequently adopted amendments or regulations); and

WHEREAS, the Parties wish to enter into this Agreement in order to comply with HIPAA's Privacy Rules and Security Rules.

AGREEMENT

THEREFORE, in consideration of the Parties' continuing obligations under the Services Agreement, and compliance with HIPAA's Privacy Rules and Security Rules, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Privacy and Security Rules and to protect the interests of the Parties.

DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the HIPAA Privacy and Security Rules (collectively, the "Rules"). In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the Rules, as amended, the applicable provisions of the Rules shall control. Where provisions of this Agreement are different than those mandated in the Rules, but are nonetheless permitted by the Rules, the provisions of this Agreement shall control.

The term "Protected Health Information" shall be referred to in this Agreement as "PHI" and means individually identifiable health information including, without limitation, all information, data, documentation

and materials, including without limitation, demographic, medical and financial information, that relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information may be used to identify the individual. "Electronic Protected Health Information" shall be referred to in this Agreement as "EPHI" and means PHI that is transmitted by or maintained in electronic media.

Business Associate acknowledges and agrees that all PHI and EPHI that is created or received by Covered Entity and maintained, disclosed, transmitted or otherwise made available in any form, including paper record, oral communication, audio recording, and electronic media by Covered Entity or its operating units to Business Associate or is created, received, maintained or transmitted by Business Associate on Covered Entity's behalf is the property of the Covered Entity and shall be subject to this Agreement.

PERMITTED USES OF PHI AND EPHI BY BUSINESS ASSOCIATE

Business Associate is only authorized to use or disclose PHI and EPHI as set forth in this Agreement. All other uses or disclosures of PHI and EPHI are prohibited. Business Associate agrees to use or disclose PHI or EPHI solely:

- (1) For fulfilling its obligations as set forth in the Services Agreement, or any other agreement evidencing the business relationship between the Covered Entity and the Business Associate, provided that such use or disclosure would not violate the Privacy Rule if done by the Covered Entity.
- (2) As required by applicable law, rule or regulation.
- (3) As otherwise expressly permitted under this Agreement or the Services Agreement.
- (4) If necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate; provided that, as to any such disclosure, the following requirements are met:
 - (a) The disclosure is required by law; or
 - (b) Business Associate obtains reasonable written assurances from the person to whom the information is disclosed that (1) 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 (2) the person notifies Business Associate of any instances in which the confidentiality of the information has been breached.
- (5) For data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Agreement, data aggregation services means the combining of PHI or EPHI by Business Associate with the PHI or EPHI received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
- (6) In a manner consistent with Covered Entity's minimum necessary policies and procedures. Business Associate will request, use and disclose (including to its workforce, contractors, subcontractors, or agents) the minimum PHI necessary to perform or fulfill its function or to comply with its duties under the Services Agreement.

Business Associate acknowledges and agrees that any use or disclosure of PHI by Business Associate not expressly permitted under the Services Agreement or this Agreement is prohibited.

DUTIES OF THE BUSINESS ASSOCIATE

The Business Associate represents and agrees to perform the following duties:

- (1) Not use or disclose PHI other than as permitted or required by this Agreement or as required by law.
- (2) Implement and enforce appropriate safeguards to detect and to prevent the use or disclosure of PHI and EPHI other than as permitted in this Agreement. This shall include, but not be limited to, taking reasonable steps to ensure that its employees' and agents' actions or omissions do not cause Business Associate to breach the terms of this Agreement. With specific regard to EPHI, Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the EPHI that it creates, receives, maintains or transmits on behalf of the Covered Entity. Business Associate shall de-identify all PHI and EPHI as directed by HIPAA prior to taking it off-site, to the extent Business Associate does not require such PHI and EPHI to perform its functions, activities or services on behalf of Covered Entity. Business Associate will comply, pursuant to HITECH and its implementing regulations, with all applicable requirements of the Security Rule contained in 45 CFR §§164.308, 164.310, 164.312 and 164.316 at such time as the requirements are applicable to Business Associate.
- (3) Ensure that its agents, including subcontractors, to whom it provides PHI and EPHI agree in writing to the same restrictions and conditions that apply to Business Associate under this Agreement and agree to implement reasonable and appropriate safeguards to protect such PHI and EPHI.
- (4) Allow the Secretary of Health and Human Services ("Secretary") and the Covered Entity the right to audit Business Associate's internal records and practices related to the use and disclosure of PHI and EPHI to ensure Covered Entity is in compliance with HIPAA. Business Associate shall fully cooperate with the Secretary in this audit. Business Associate shall also provide Covered Entity with a full copy of the information made available under this provision.
- (5) Make PHI and EPHI available to the Covered Entity in response to an individual's request for access to PHI as required by 45 CFR § 164.524.
- (6) Make PHI and EPHI available as directed by the Covered Entity for amendment and incorporate any amendments as directed by the Covered Entity and as required by 45 CFR § 164.526.
- (7) Document such disclosures of PHI and EPHI and information related to such disclosures as would be required to respond to a request by an individual for an accounting of disclosures of PHI under 45 CFR § 164.528 of HIPAA.
- (8)
 - (a) Advise Covered Entity if any use or disclosure of PHI or EPHI by Business Associate, its employees, agents or subcontractors did not comply with the terms of this Agreement.
 - (b) Report to Covered Entity any "Security Incident" of which it becomes aware, as such term is defined in the security regulations of the HIPAA Privacy and Security Rule. A Security Incident, as such term is defined in the HIPAA Privacy and Security Rules, shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system.
 - (c) Following the discovery of a Breach of Unsecured PHI, as such terms are defined in the security regulations of the HIPAA Privacy and Security Rule, notify Covered Entity of such Breach in accordance with 45 CFR §164.410. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate. Business Associate will provide such notification to Covered Entity

without unreasonable delay and in no event later than sixty (60) calendar days after the discovery of the Breach. Such notification will contain the elements required in 45 CFR §164.410.

- (d) The parties will work together to conduct a risk assessment and determine if there is a Breach requiring notification under 45 CFR § 164.404. If notification is required, the parties will cooperate in issuing any required notices and will comply with the notification requirements under 45 CFR § 164.410. Business Associate will notify Covered Entity prior to making any notification of breaches relating to Covered Entity's PHI.

These duties are in addition to any duties that Business Associate may have directly under HIPAA for breach notification.

- (9) Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of an improper or unauthorized use or disclosure of PHI or EPHI, provided that, Business Associate shall notify Covered Entity of its mitigation efforts.
- (10) To the extent Business Associate is to carry out one or more of the Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
- (11) Make its policies, procedures, and documentation available to the Secretary of the U.S. Department of Health and Human Services, and, at Covered Entity's request, to the Covered Entity, for purposes of the Secretary determining compliance with the HIPAA Privacy and Security Rules.

Business Associate will not directly or indirectly receive remuneration in exchange for any PHI, subject to the exceptions contained in the HITECH Act, without a valid authorization from the applicable individual. Business Associate will not engage in any communication which might be deemed to be "marketing" under the HITECH Act.

TERM AND TERMINATION

- (1) **Term.** The term of this Agreement shall be effective as of the Effective Date, and shall terminate upon the termination of the Services Agreement or on the date Covered Entity terminates this Agreement for cause as authorized in Subsection 2(b) below, whichever is sooner.
- (2) **Termination rights.** Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, notwithstanding anything in this Agreement or the Services Agreement to the contrary, Covered Entity shall have the right to either:
 - (a) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the Services Agreement if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or
 - (b) Immediately terminate this Agreement and the Services Agreement.

RETURN OR DESTRUCTION OF PHI AND EPHI

Upon termination of this Agreement, the Services Agreement or upon request of Covered Entity, whichever occurs first, Business Associate will, if feasible, return or destroy all PHI and EPHI received from or created by Business Associate on behalf of Covered Entity. Business Associate shall return to Covered Entity or destroy all PHI and EPHI in any form and retain no copies.

If return or destruction of the PHI and EPHI is not feasible, then Business Associate shall:

- (1) Retain only that PHI and EPHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

- (2) Return to Covered Entity [or, if agreed to by Covered Entity, destroy] the remaining PHI and EPHI that Business Associate still maintains in any form;
- (3) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to EPHI to prevent use or disclosure of the PHI, other than as provided for in this subsection, for as long as Business Associate retains the PHI;
- (4) Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions which applied prior to termination; and
- (5) Return to Covered Entity [or, if agreed to by Covered Entity, destroy] the PHI 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.

MISCELLANEOUS

- (1) Restriction of Rights. Except as expressly stated herein or in HIPAA, the Parties do not intend to create any rights in any third parties.
- (2) Survival. The obligations of Business Associate under this Agreement shall survive the expiration, termination or cancellation of this Agreement, the Services Agreement and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors and assigns as set forth herein.
- (3) Entire Agreement; Amendment. This Agreement supersedes all agreements previously made between the parties relating to its subject matter, including but not limited to any previously executed business associate agreements. There are no other understandings or agreements between them. This Agreement may be amended or modified only in a writing signed by the Parties. Notwithstanding the foregoing, the Parties agree that this Agreement shall amend automatically to comply with any changes in the regulations and legislation governing HIPAA and to comply with any other relevant state or federal law, and shall incorporate all such changes without the need for a writing signed by the Parties.
- (4) Non-assignment. No party may assign its respective rights and obligations under this Agreement without the prior written consent of the other party.
- (5) Relationship. None of the provisions of this Agreement are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship.
- (6) Waiver. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- (7) Controlling Terms. The Parties agree that, in the event that any documentation of the agreement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of PHI and EPHI that are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. Otherwise, the terms of this Agreement shall control.
- (8) Minimum Standards. This Agreement is intended to establish the minimum requirements regarding Business Associate's use, protection and disclosure of PHI and EPHI.
- (9) Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of HIPAA, such party shall notify the other party in writing. For a period of up to thirty (30) days, the parties shall address such concern in good faith and amend the terms of this Agreement if necessary to bring it into compliance with HIPAA. If, after such thirty (30) day period, the Agreement fails to comply with HIPAA, then either party has the right to terminate upon written notice to the other party.

(10) Governing Law. To the extent not pre-empted by federal law, this Agreement will be governed by the laws of the State of North Carolina.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

COVERED ENTITY:

PENDER COUNTY GOVERNMENT

By: _____

Name: _____

Title: _____

BUSINESS ASSOCIATE:

HEALTHSTAT, INC.

By: _____

Name: _____

Title: _____