



EMPLOYEE ASSISTANCE PROGRAM AGREEMENT

THIS AGREEMENT (“Agreement”), is made and entered into on 1/1/2019 (the “Effective Date”) by and between **Bronson Battle Creek Hospital (“BBCH”), d/b/a HelpNet Employee Assistance Program** (hereinafter “HelpNet”), a Michigan non-profit corporation, and **City of Gahanna**, 200 S. Hamilton Rd., Gahanna, OH 43230 (hereinafter “Client”).

WHEREAS, HelpNet provides Employee Assistance Program (EAP) services to employers, and Client wishes to purchase the services offered, on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, Client and HelpNet (hereinafter sometimes collectively referred to as the “Parties” and individually, as the “Party”) hereto agree as follows:

I. DEFINITIONS

- A. EAP Services.** EAP services include first line response to providing prevention, triage, solution focused counseling and/or referral for EAP member. EAP services include a thorough assessment for EAP Member, seeking or referred for EAP services, to determine if EAP is appropriate service or if more intensive service or care program is indicated. The EAP assessment will result in the formulation of an EAP service plan specific to that EAP Member. If a referral for more advanced services is necessary, HelpNet shall make appropriate referral and facilitate this referral process.
- B. Short-Term Counseling.** A brief counseling model that seeks resolution of problems in daily living or life challenges. The emphasis is on client strengths and resources, and involves setting and maintaining realistic goals. Various session models are available.
- C. EAP Member.** An individual who is eligible to receive EAP services from HelpNet. EAP service is available to eligible employees, their dependents and employee household members.
- D. Self Referral.** An EAP Member requests services from HelpNet who personally calls for an EAP appointment.
- E. Management Referral.** A referral from employer for an employee who has reached the final stage of progressive discipline or whose job performance is at an unacceptable level and will lead to termination of employment. A signed Management Referral Form and Client Release Authorization Form are required from the employer to facilitate communication with the employer as outlined in HelpNet’s Management Program Procedures.
- F. Case Closure.** EAP Services are completed or EAP Member is referred for further follow-up with care provider.

II. RESPONSIBILITIES OF HELPNET

- A. Provision of Standard EAP Services.** HelpNet agrees to render EAP Covered Services to EAP Member, under the terms and conditions of this Agreement, who have registered with HelpNet. HelpNet shall provide EAP Members the following EAP Services, as clinically appropriate:
- 1. Access to EAP Services.** HelpNet will provide a toll-free number for Call Center Services. These services include, but are not limited to, telephone access to intake and appointments, clinical assessment and crisis intervention, triage, information and consultation. HelpNet provides Masters Level Therapists who are available twenty-four (24) hours per day, seven (7) days per week, and three hundred sixty-five (365) days per year. These crisis-trained therapists have experience in dealing with suicidal, homicidal, or seriously distressed callers. HelpNet will follow relevant practice and take reasonable and appropriate action in maintaining EAP Member safety. HelpNet will provide appropriate follow-up for all contact with the EAP.
 - 2. Assessment.** HelpNet shall provide a licensed therapist with a minimum of a Master's degree in a psychologically-related field to assess the EAP Member's personal problems and to determine whether EAP short-term counseling or referral for long-term or specialized services is appropriate. HelpNet will provide continuous follow-up as necessary, to monitor adherence to the agreed upon course of treatment. Court-ordered assessments and treatment are not covered under this Agreement.
 - 3. Short-Term Counseling.** As indicated by the assessment of an EAP Member, HelpNet shall provide brief therapy for the EAP Member when the presenting problem(s) are deemed amenable to EAP short-term counseling by the assessing therapist.
 - 4. Referrals.** HelpNet shall make referrals, as necessary, to appropriate resources within the community. HelpNet shall discuss a range of referral options, including, as appropriate, self-help groups and/or professional resources eligible under EAP Member's Benefit Plan. HelpNet will provide information on health insurance coverage provided by Client, to facilitate referral to a covered provider.
 - 5. Follow-up.** When HelpNet makes a referral, HelpNet shall maintain contact with the EAP Member until the EAP Member is actively involved in treatment with covered provider to whom EAP Member is referred. If a referral is ineffective or inappropriate, HelpNet will provide a post-referral session to facilitate referral to a different provider.
 - 6. Management Referral.** When Client notifies HelpNet that an employee's participation in the EAP is required as a condition of employment, HelpNet will offer an appointment after notification has been received by HelpNet and will provide all services as outlined in Exhibit A, attached hereto and incorporated herein. HelpNet will report conclusions and recommendations to Client, if Client Release Authorization Form has been executed.

7. **Critical Incident Stress Management (CISM).** HelpNet shall provide CISM services, including work-site small and/or large group debriefings, grief and loss support, individual support, corporate downsizing support, and telephonic support. Please see Exhibit B for details.
8. **HelpNet Website.** HelpNet provides an interactive website (www.helpneteap.com) that provides EAP brochures, forms, and newsletters. EAP Services Orientation and Supervisory Training are also available on the HelpNet website.
9. **EAP Services Development and Consultation.** HelpNet shall provide organizational development and ongoing consultation to assist in developing and implementing EAP Services policies and procedures. Management consultation regarding employee performance problems, EAP referrals, conflict resolution, and assistance with implementation, operation, evaluation and modification of the EAP Services can also be provided.
10. **Orientation.** Employee orientations will be made accessible through HelpNet's website (www.helpneteap.com) or, if purchased, at Client's work-site to familiarize EAP Members with EAP Services, how the benefit works, and the services available. The orientation emphasizes employees' self-help and the risks associated with personal problems that are not resolved. Please see Exhibit B for details.
11. **Supervisory Training.** EAP Supervisory Training will be provided at Client's work-site, if purchased, or through HelpNet's website. This Supervisory Training will clearly define the respective roles and focus on specific skill building for recognition, intervention, and referral of the troubled employee. Please see Exhibit B for details.
12. **Promotional Materials.** HelpNet will furnish EAP Services brochures, training and orientation materials, and newsletters to publicize the EAP Services. Materials can be in electronic or hard copy version. Depending on quantity requested, there may be a fee for hard copies. Please see Exhibit B for details.
13. **Utilization Reports.** HelpNet will provide statistical reports on a quarterly and annual basis. The data included provides confidentiality of the EAP Member(s), according to State and Federal guidelines of confidentiality.

B. Optional EAP Services

1. **Life Enhancement Seminars.** Topical seminars and customized presentations are available. Please see Exhibit B for details.
2. **Legal/Financial Referral Services.** This service provides the EAP Member with legal and financial referrals to attorneys and financial professionals in their geographic area. Please see Exhibit B for details.

3. **Basic Work/Life Web Service.** Includes article tip sheets, audio and video information on a wide variety of work-life topics. Includes downloadable legal documents, self-search resources for childcare, elder care, volunteering, camps and more. Please see Exhibit B for details.
4. **Enhanced Work-Life Web Services (Advantage Complete).** A more comprehensive service that provides the EAP Member with several access options, including telephone, online instant messaging, and online-assisted search. Care Consultants are available twenty-four (24) hours per day, seven (7) days per week to provide customized referrals including childcare, adoption, education, elder care, wellness, as well as other additional work/life features. EAP Members receive customized referrals within twelve (12) business hours. Please see Exhibit B for details.
5. **Wellness Coaching.** Provides Wellness Coaching with a certified Wellness Coach via phone or web. Includes personalized wellness plans, educational materials, online resources available twenty-four (24) hours per day, seven (7) days per week, articles, tools and tip sheets. Please see Exhibit B for details.

III. OPERATING STANDARDS

- A. **Confidential EAP Member Information.** HelpNet acknowledges that under this Agreement, HelpNet will be serving both the Client and the EAP Members. Any information acquired by HelpNet from an EAP Member regarding Client's personnel, services, policies, or products shall be considered confidential information that HelpNet shall not disclose unless required by Law.
- B. **Threats of Violence.** HelpNet will immediately report to Client all threats of violence to Client's personnel, facilities, or assets. HelpNet licensed professionals will also report any information to appropriate authorities as defined by and as required by law.
- C. **Objectivity/Arbitration.** In order to maintain objectivity and neutrality that will serve the best interest of Client and its EAP Members, HelpNet will not testify in writing or in person at grievance hearings or arbitrations concerning EAP Services provided to EAP Members. If the EAP Member signs a Client Release Authorization Form, giving permission, HelpNet will provide limited information to the Client only as designated on the release.
- D. **Ownership and Record Retention.** All case records, files, data, etc., maintained in conjunction with the EAP Services provided under this Agreement shall be the property of HelpNet. HelpNet shall retain case records pertaining to EAP Members for as long as required or permitted by applicable state and federal laws, and shall cause the records to be destroyed thereafter.
- E. **Non-Disclosure and Confidentiality.** All case records maintained in conjunction with EAP Services provided under this Agreement shall be confidential. HelpNet shall comply with the Health Insurance and Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d ("HIPAA"), and any current and future regulations promulgated thereunder, including

without limitation, the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the "Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Part 142 (the "Federal Security Regulations"), and the federal standard for electronic transactions contained in 45 C.F.R. Parts 160 and 162, all collectively referred to herein as "HIPAA Requirements." HelpNet shall not use or disclose any Protected Health Information (as defined in 45 C.F.R. § 164.501) or Individually Identifiable Health Information (as defined in 42 U.S.C § 1320d), other than permitted by HIPAA and terms of this Agreement. HelpNet will exclude confidential information relating to EAP Member private information in all reports made to Client, unless authorized by EAP Member.

The parties acknowledge and agree that, in the course of performing their obligations under this Agreement, should either Party receive business information of the other Party, such Party will treat such information as confidential and proprietary. Such business information may include but is not limited to, personnel information, financial, marketing data, customers and suppliers, procedures, methodologies, techniques, technology, specification and design information, which is confidential and proprietary to the other party ("Proprietary Information"), which provides that party with a competitive advantage in its relevant markets and which the other party would not otherwise know. The parties agree and acknowledge that each party is the owner of its own Proprietary Information. Proprietary Information shall not include information that: (a) was in Receiving Party's legitimate possession prior to receipt of such information from Disclosing Party; (b) is independently developed by Receiving Party; (c) was rightfully received from third parties and, to the best knowledge of Receiving Party, without an obligation of confidentiality to Disclosing Party; (d) is in the public domain through means other than by breach of this Agreement by Receiving Party; or (e) is disclosed pursuant to any judicial or government request, requirement or order, provided that Receiving Party takes reasonable steps to provide Disclosing Party the ability to contest such request, requirement or order. The parties acknowledge that Confidential Information has competitive value and that irreparable damage may result to the Disclosing Party if Receiving Party discloses Confidential Information. The parties agree that legal proceedings at law or in equity, including injunctive relief, are appropriate in the event of a breach hereof without the duty of posting bond.

1. During the term of this Agreement and thereafter, regardless of the reason for the termination of this Agreement, both Parties shall hold all Proprietary Information, whether in the form of raw data or otherwise, and whether a trade secret, copyrighted work, patentable subject matter, or otherwise, in confidence and shall not discuss, communicate or disclose to others, or make any copy or use of the Proprietary Information without first obtaining the written consent of the other party, unless required by law.
2. The existence of this Agreement and its terms is confidential. Client may not make any public statement, including a press release or advertisement, describing HelpNet and/or Bronson Battle Creek Hospital or the relationship with such entities without HelpNet written consent.

This Section III.E shall survive the expiration or termination of this Agreement.

- F. Insurance.** HelpNet will maintain general and professional liability insurance, and worker's compensation, in accordance with state law. Upon request, HelpNet will provide Client with a certificate evidencing such insurance.
- G. Quality Assurance Evaluation.** HelpNet gathers information from EAP Members anonymously to evaluate services. Prior to case closure the EAP Member will be provided with a Client Satisfaction Survey to fill out and return to HelpNet. HelpNet will investigate any problems or complaints according to legal and ethical guidelines.

IV. RESPONSIBILITIES OF CLIENT

- A. EAP Services Coordinator.** Client shall designate an EAP Services Coordinator who shall serve as the primary liaison between HelpNet and Client. Client's EAP Services Coordinator will proactively support the EAP Services publicity and promotion, training programs, and other activities as deemed appropriate to Client's employees.
- B. HelpNet Contract Information Form.** Client agrees to provide complete information on the HelpNet Contract Information Form, attached hereto and incorporated herein as Exhibit A, and return it to HelpNet.
- C. Eligibility/Employee Listing.** Upon request, Client agrees to provide an employee listing/count of EAP Services eligible employees at least annually to HelpNet so HelpNet may generate an accurate invoice. The EAP Services Coordinator shall advise HelpNet, upon reasonable request from HelpNet, whether or not any other employee/family member is eligible to receive EAP Services in the event that the name does not appear on the current list.
- D. Fees/Payment.** In consideration of the services provided under this Agreement, Client agrees to pay HelpNet based on the per capita fee (per employee, per year, "PEPY") as defined in Exhibit B, attached hereto and incorporated herein. The total amount payable will be determined by multiplying the per capita fee by the number of employees on Client's Employee Listing. HelpNet will send Client an invoice and Client will submit payment within thirty (30) days of the due date. If payment is not received within thirty (30) days of due date, HelpNet may charge a monthly late penalty of one and one half percent (1.5%) per month of the total premium amount or percentage rate not to exceed usury rate as defined by State Law, calculated retroactive to the payment due date.

V. TERM AND TERMINATION

- A. Term of Contract and Without Cause Termination.** The terms of this contract will begin on the date listed above and allow for termination, by either Party, with or without cause, and without penalty, upon ninety (90) days written notice to the other party, by sending written notice in accordance with the Notifications Section.

- B. Termination for Breach.** In the event of the breach of any provision of this Agreement, the non-breaching party shall notify the alleged breaching party, in writing, of the specific nature of the breach and shall request that it be immediately cured. If the breaching party does not cure the breach within thirty (30) days of their receipt of such notice, the non-breaching party may immediately terminate this Agreement, upon written notice to the breaching party. The termination of this Agreement, pursuant to such breach, shall not preclude the non-breaching party from pursuing any and all available remedies.
- C. Change in Law.** HelpNet may terminate this Agreement immediately should any governmental agency, court or administrative tribunal pass any law, rule, regulation, standard, interpretation, order, decision or judgment, which in the good faith of HelpNet's counsel, materially and adversely affects BBCH's or HelpNet's licensure, accreditation, certification or ability to refer, or accept any referral, to bill or to present a claim for reimbursement or a risk of prosecution or civil money penalty.

VI. MISCELLANEOUS

- A. Severability.** The parties hereto have negotiated and prepared the terms of this Agreement in good faith with the intent that each and every one of the terms, covenants, and conditions herein be binding upon and inure to the benefit of the respective parties. Accordingly, if any one or more of the terms, provisions, promises, covenants, or conditions of this Agreement or the application thereof to any person or circumstance shall be adjudged to any extent invalid, unenforceable, void, or voidable for any reason whatsoever by a court of competent jurisdiction, such provision shall be as narrowly construed as possible, and each and all of the remaining terms, provisions, promises, covenants, and conditions of this Agreement or their application to other persons or circumstances shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.
- B. Independent Contractor.** It is mutually understood and agreed that the parties shall be and at all times is acting and performing as independent contractors. Nothing in this Agreement is intended to create an employer/employee relationship or a joint venture relationship between the parties.
- C. Assignment.** Neither party may assign, delegate or otherwise transfer any of its rights or obligations hereunder, nor may it contract with third parties to perform any of its duties or obligations hereunder, except as contemplated in this Agreement, without the other party's prior written consent; provided, however, that Client acknowledges and agrees that HelpNet may assign its rights, duties and obligations herein to any entity which is the surviving entity in a merger with HelpNet or which purchases all or substantially all of the assets of HelpNet. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Client acknowledges that HelpNet may subcontract with third parties to perform services under this Agreement. HelpNet will provide a list of such subcontractors within five (5) business days of Client's request.
- D. Mutual Indemnification.** Each party agrees to indemnify, defend and hold harmless the other, its respective affiliates, members, directors, trustees, officers, employees, agents and

insurers, from and against any and all claims, demands, actions, losses, expenses, damages, liabilities, costs (including, without limitation, interest, penalties and reasonable attorneys' fees and expenses) and judgments arising out of the acts and omissions of such party, and its directors, officers, employees, agents and insurers, under, pursuant to and in connection with this Agreement, including but not limited to bodily injury, property damage or any other damage or injury.

- E. Protected Health Information (PHI)/HIPAA.** HelpNet agrees to maintain and require its employees and agents to maintain the confidence of any and all patient information which may be acquired in the performance of services under this Agreement. HelpNet agrees to comply with the requirements contained in Exhibit C, attached hereto and incorporated herein, as it relates to HIPAA and PHI.
- F. Governing Law and Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of Michigan. Calhoun County, Michigan shall be the sole, proper venue for any litigation, proceeding or special proceeding between the parties which arises out of or is in connection with any right, duty or obligation under this Agreement.
- G. Amendment.** No amendment of this Agreement shall be deemed effective unless in writing and signed by each of the parties hereto.
- H. Waiver.** Any waiver of a breach of any provision(s) of this Agreement shall not be deemed effective unless it is in writing and signed by the party against whom enforcement of the waiver is sought.
- I. Notifications.** Any notice required to be given pursuant to the terms and provisions herein shall be in writing, postage and delivery charges prepaid, overnight mail service, first-class mail or certified mail, return receipt requested, to HelpNet or Client at the addresses below. Any party may change the address to which notices are to be sent by notice given in accordance with the provisions of this section. Notices hereunder shall be deemed to have been given, and shall be effective upon actual receipt by the other party upon the earlier of the third (3rd) day after mailing or actual receipt by the other party.

If to City of Gahanna:

City of Gahanna
200 S. Hamilton Rd.
Gahanna, OH 43230
Attn: Human Resources

If to HelpNet:

HelpNet Employee Assistance Program
36 W. Manchester
Battle Creek, MI 49037
Attn: Director

- J. No Discrimination.** The Parties agree, in the performance of their respective duties and obligations herein, not to discriminate against any person or entity because of race, color, religion, sex, national origin, weight, height or any other prohibition set forth in applicable laws and regulations.
- K. Entire Agreement.** This Agreement, including all Exhibits and Schedules referenced herein, constitutes the entire understanding and agreement between the Parties concerning the subject

matter herein, and supersedes all prior and concurrent negotiations, agreements and understandings between the Parties, whether oral or in writing, concerning the subject matter hereof.

L. Interpretation. The Parties agree that the terms of this Agreement: (i) have been mutually negotiated by each Party with the advice of legal counsel; (ii) are intended to be for the mutual benefit of both Parties; and (iii) should not be interpreted in favor or against either Party.

M. Authority to Sign. The agent of the Parties signing this Agreement has the authority to sign and bind the parties.

IN WITNESS WHEREOF, the undersigned authorized representatives of the Parties have executed this Agreement, effective as of the Effective Date.

City of Gahanna

By: _____

Print Name: _____

Print Title: _____

Date: _____

Bronson Battle Creek Hospital d/b/a
HelpNet Employee Assistance Program

By: _____

Print Name: _____

Print Title: _____

Date: _____

Exhibit A

HelpNet Contract Information Form

Organization Name: _____ FAX #: _____

Address: _____

City: _____ State: _____ Zip: _____

Primary EAP

Contact Person/Title: _____

Phone: _____

E-mail Address: _____

Secondary EAP

Contact Person/Title: _____

Phone: _____

E-mail Address: _____

Employee Count: _____

Name of Insurance

Plan: _____

Broker Name: _____

Broker E-mail: _____

Billing Statements:

Electronic Invoicing

Contact Person: _____

Send Invoice to E-mail Address: _____

Electronic Payment

Attach an ACH/EFT Authorization Form on your company's letterhead

Hard Copy

Mail to: _____

The following items will be sent to your company. Please indicate who should receive the items.

Document	Primary Contact	Secondary Contact	Other Contact (email address)
Quarterly & Annual Utilization Reports			
Electronic Promotional Items			
Monthly Supervisor Newsletters			

Exhibit B
Summary of EAP Services
for
City of Gahanna

Standard EAP Service	Cost
Short-Term Counseling Model 1-8 Sessions	\$30.04 PEPLY
Critical Incident Stress Management (CISD)	2 Hours Included >2 Hours \$300/Hr./Clinician + Travel
Enrichment Seminars	\$200/ Hour
Management Consultation	Included
Legal/Financial Referral	Included
Basic Work-Life Web	Included
Online Orientations	Included
Online Supervisory Training	Included
Promotional Materials, Hard Copy	Included
Advantage Complete Work-Life Web	Quote Available
Live Well Wellness Coaching	Quote Available

Client will pay HelpNet \$30.04 per employee per year for providing Employee Assistance Program services.

Exhibit C:

BUSINESS ASSOCIATE AGREEMENT

This **BUSINESS ASSOCIATE AGREEMENT** (this “**BA Agreement**”) is made by and between **Bronson Battle Creek Hospital, d/b/a HelpNet Employee Assistance Program (“Company”)** and **City of Gahanna (“Covered Entity”)** and is effective as of Date (“**Effective Date**”). Capitalized terms used in this BA Agreement without definition shall have the respective meanings assigned to such terms in the Administrative Simplification section of the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act and their implementing regulations as amended from time to time (collectively, “**HIPAA**”).

RECITALS

WHEREAS, Covered Entity and Company are parties to that certain agreement setting forth certain services that require Company to have access to Protected Health Information (as defined below) (the “**Services Agreement**”); and

WHEREAS, it is the intent of Covered Entity and Company to amend the Services Agreement, as described in this BA Agreement, for the parties to comply with HIPAA (as defined in Section 1.1).

NOW THEREFORE, in consideration of the mutual premises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Covered Entity and Company agree as follows:

AGREEMENT

I. GENERAL PROVISIONS.

Section 1.1 Effect. The provisions of this BA Agreement shall control with respect to Protected Health Information that Company receives from or on behalf of Covered Entity (“**PHI**”), and the terms and provisions of this BA Agreement shall supersede any conflicting or inconsistent terms and provisions in the Services Agreement, including all exhibits or other attachments thereto and all documents incorporated therein by reference, to the extent of such conflict or inconsistency. This Agreement shall not modify or supersede any other provision of the Services Agreement.

Section 1.2 No Third Party Beneficiaries. The parties have not created and do not intend to create by this BA Agreement any third party rights, including, but not limited to, third party rights for Covered Entity’s patients.

Section 1.3 HIPAA Amendments. The parties acknowledge and agree that the Health Information Technology for Economic and Clinical Health Act and its implementing regulations impose requirements with respect to privacy, security and breach notification applicable to Business Associates (collectively, the “**HITECH BA Provisions**”). The HITECH BA Provisions and any other future amendments to HIPAA affecting Business Associate agreements are hereby incorporated by reference into this BA Agreement as if set forth in this BA Agreement in their entirety, effective on the later of the effective date of this BA Agreement or such subsequent date as may be specified by HIPAA.

Section 1.4 Regulatory References. A reference in this BA Agreement to a section in HIPAA means the section as it may be amended from time-to-time.

II. COMPANY'S OBLIGATIONS.

Section 2.1 Use and Disclosure of PHI. Company may use and disclose PHI as permitted or required under the Services Agreement, this BA Agreement and as Required by Law, but shall not otherwise use or disclose any PHI. Company shall not use or disclose PHI received from Covered Entity in any manner that would constitute a violation of HIPAA if so used or disclosed by Covered Entity (except as set forth in Sections 2.1(a), (b) and (c) of this BA Agreement). To the extent Company carries out any of Covered Entity's obligations under the HIPAA privacy standards, Company shall comply with the requirements of the HIPAA privacy standards that apply to Covered Entity in the performance of such obligations. Company is permitted to use or disclose PHI as set forth below:

- (a) Company may use PHI internally for its proper management and administrative services or to carry out its legal responsibilities;
- (b) Company may disclose PHI to a third party for Company's proper management and administration, provided that the disclosure is Required by Law or Company obtains reasonable assurances from the third party to whom the PHI is to be disclosed that the third party will (1) protect the confidentiality of the PHI, (2) only use or further disclose the PHI as Required by Law or for the purpose for which the PHI was disclosed to the third party and (3) notify Company of any instances of which the third person is aware in which the confidentiality of the PHI has been breached;
- (c) Company may use PHI to provide Data Aggregation services as defined by HIPAA; and
- (d) Business Associate may use Protected Health Information to create de-identified health information in accordance with the HIPAA de-identification requirements. Business Associate may disclose de-identified health information for any purpose permitted by law.

Section 2.2 Safeguards. Company shall use reasonable and appropriate safeguards to prevent the use or disclosure of PHI, except as otherwise permitted or required by this BA Agreement. In addition, Company shall implement Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of PHI transmitted or maintained in Electronic Media ("**E PHI**") that it creates, receives, maintains or transmits on behalf of Covered Entity. Company shall comply with the HIPAA Security Rule with respect to E PHI.

Section 2.3 Minimum Necessary Standard. To the extent required by the "minimum necessary" requirements of HIPAA, Company shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure.

Section 2.4 Mitigation. Company shall take reasonable steps to mitigate, to the extent practicable, any harmful effect (that is known to Company) of a use or disclosure of PHI by Company in violation of this BA Agreement.

Section 2.5 Trading Partner Agreement. Company shall not take any of the following actions: change the definition, Data Condition, or use of a Data Element or Segment in a Standard; add any Data Elements or Segments to the maximum defined Data Set; use any code or Data Elements that are either marked “not used” in the Standard’s Implementation Specification or are not in the Standard’s Implementation Specification(s); or change the meaning or intent of the Standard’s Implementation Specification(s).

Section 2.6 Subcontractors. Company shall enter into a written agreement meeting the requirements of 45 C.F.R. §§ 164.504(e) and 164.314(a)(2) with each Subcontractor (including, without limitation, a Subcontractor that is an agent under applicable law) that creates, receives, maintains or transmits PHI on behalf of Company. Company shall ensure that the written agreement with each Subcontractor obligates the Subcontractor to comply with restrictions and conditions that are at least as restrictive as the restrictions and conditions that apply to Company under this BA Agreement.

Section 2.7 Reporting Requirements.

(a) If Company becomes aware of a use or disclosure of PHI in violation of this BA Agreement by Company or by a third party to which Company disclosed PHI, Company shall report any such use or disclosure to Covered Entity without unreasonable delay.

(b) Company shall report any Security Incident involving EPHI of which it becomes aware in the following manner: (1) any actual, successful Security Incident will be reported to Covered Entity in writing without unreasonable delay, and (2) any attempted, unsuccessful Security Incident of which Company becomes aware will be reported to Covered Entity orally or in writing on a reasonable basis, as requested by Covered Entity. If the HIPAA security regulations are amended to remove the requirement to report unsuccessful attempts at unauthorized access, the requirement hereunder to report such unsuccessful attempts will no longer apply as of the effective date of the amendment.

(c) Company shall, following the discovery of a Breach of Unsecured PHI, notify the Covered Entity of such Breach in accordance with 45 C.F.R. § 164.410 without unreasonable delay and in no case later 60 days after discovery of the Breach.

Section 2.8 Access to PHI. Within 15 business days of a written request by Covered Entity for access to PHI about an Individual contained in any Designated Record Set of Covered Entity maintained by Company, if any, Company shall make available to Covered Entity such PHI for so long as Company maintains such information in the Designated Record Set. If Company receives a request for access to PHI directly from an Individual, Company shall forward such request to Covered Entity within ten business days. Covered Entity shall have the sole responsibility for determining whether to approve a request for access to PHI.

Section 2.9 Availability of PHI for Amendment. Within 15 business days of receipt of a written request from Covered Entity for the amendment of an Individual's PHI contained in a Designated Record Set of Covered Entity maintained by Company, if any, Company shall provide such information to Covered Entity for amendment and incorporate any such amendments in the PHI (for so long as Company maintains such information in the Designated Record Set) as required by 45 C.F.R. § 164.526. If Company receives a request for amendment to PHI directly from an Individual, Company shall forward such request to Covered Entity within ten business days. Covered Entity shall have the sole responsibility for determining whether to approve an amendment to PHI.

Section 2.10 Accounting of Disclosures. Within 30 business days of written notice by Covered Entity to Company that it has received a request for an accounting of disclosures of PHI (other than disclosures to which an exception to the accounting requirement applies), Company shall make available to Covered Entity such information as is in Company's possession and is required for Covered Entity to make the accounting required by 45 C.F.R. § 164.528. Covered Entity shall have the sole responsibility for providing an accounting to the Individual.

Section 2.11 Availability of Books and Records. Following reasonable advance written notice, Company shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Company on behalf of, Covered Entity available to the Secretary for purposes of determining Covered Entity's compliance with HIPAA.

III. **OBLIGATIONS OF COVERED ENTITY.**

Section 3.1 Permissible Requests. Covered Entity shall not request Company to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Covered Entity (except as provided in Sections 2.1(a), (b) and (c) of this BA Agreement).

Section 3.2 Minimum Necessary PHI. When Covered Entity discloses PHI to Company, Covered Entity shall provide the minimum amount of PHI necessary for the accomplishment of Company's purpose.

Section 3.3 Permissions; Restrictions. Covered Entity warrants that it has obtained and will obtain any consents, authorizations and/or other legal permissions required under HIPAA and other applicable law for the disclosure of PHI to Company. Covered Entity shall notify Company of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Company's use or disclosure of PHI. Covered Entity shall not agree to any restriction on the use or disclosure of PHI under 45 CFR § 164.522 that restricts Company's use or disclosure of PHI under this Agreement unless such restriction is Required By Law or Company grants its written consent, which consent shall not be unreasonably withheld.

Section 3.4 Notice of Privacy Practices. Except as Required By Law, with Company's consent or as set forth in the Services Agreement or this BA Agreement, Covered Entity shall not include any limitation in the Covered Entity's notice of privacy practices that limits Company's use or disclosure of PHI under the Services Agreement.

IV. TERMINATION OF THE AGREEMENT.

Section 4.1 Termination Upon Breach of Provisions Applicable to PHI. Any other provision of the Services Agreement notwithstanding, the Services Agreement and this BA Agreement may be terminated by either party (the “**Non-Breaching Party**”) upon 30 days written notice to the other party (the “**Breaching Party**”) in the event that the Breaching Party materially breaches any provision contained in this BA Agreement in any material respect and such breach is not cured within such 30-day period.

Section 4.2 Return or Destruction of PHI upon Termination. Upon termination of this BA Agreement, Company shall return or destroy all PHI received from Covered Entity or created or received by Company on behalf of Covered Entity and which Company still maintains as PHI. Notwithstanding the foregoing, to the extent that Company reasonably and in good faith determines that it is not feasible to return or destroy such PHI, the terms and provisions of this BA Agreement shall survive termination of the Services Agreement and such PHI shall be used or disclosed solely for such purpose or purposes which prevented the return or destruction of such PHI.

V. COUNTERPARTS.

This BA Agreement may be executed in two counterparts, each of which shall be deemed an original but both of which together shall constitute one and the same instrument. Copies of signatures sent by facsimile transmission or scanned and sent by email are deemed to be originals for purposes of execution and proof of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this BA Agreement.

City of Gahanna

By: _____

Print Name: _____

Print Title: _____

Date: _____

**Bronson Battle Creek Hospital d/b/a
HelpNet Employee Assistance Program**

By: _____

Print Name: _____

Print Title: _____

Date: _____