



## Administrative Services Agreement

This Administrative Services Agreement (the "Agreement") between (Company Legal Name),  
a (state of incorporation / entity type) (the "Company") and DWS Holdings, LLC d/b/a LyfeSystems, a  
Washington limited liability company ("Contract Administrator"), collectively referred to as the  
"Parties" or individually as "Party," is effective (Date) ("Effective Date").

By signing below, each party agrees to the terms of this Agreement.

(Company Legal Name)  
(Address)  
(City, State and Zip Code)  
EIN:

**DWS Holdings, LLC d/b/a LyfeSystems**  
PO Box 697  
La Conner, WA 98257

By:   
Authorized Signature

By:   
Authorized Signature

Print Name:

Print Name:

Print Title:

Print Title:

Date:

Date:

### RECITALS

**WHEREAS**, Company desires to sponsor a health care benefit plan for its eligible employees and their dependents;

**WHEREAS**, Contract Administrator packages certain self-funded group health and other complementary healthcare products and services (the "Benefit Components") in order to provide a single-sourced employer-sponsored benefits plan (the "Plan");

**WHEREAS**, Company desires to engage Contract Administrator, and Contract Administrator agrees to provide administrative services to the Plan which shall include the following Benefit Components: (CHECK ALL THAT APPLY)

- ☒ Minimum Essential Coverage ("MEC"): a self-funded group health plan providing Preventive Benefits as required by the Affordable Care Act ("ACA")
- ☐ Direct.Fit™ Dental, a self-funded group dental plan
- ☐ Direct.Fit™ Vision Club, an Excepted Benefit Health Reimbursement Arrangement ("EBHRA") providing funds for vision expenses at designated participating providers

- ☐ Sedera SELECT+, a post-tax Fringe Benefit program providing Membership in the Sedera Medical Cost Sharing Community for reimbursement of the costs associated with injury and illness
- ☒ MeMD a telemedicine program specifically for Employee and their Dependents

**WHEREAS**, Company and Contract Administrator desire to set forth herein their respective obligations, duties, rights and liabilities;

**NOW THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the sufficiency and receipt of which the Parties acknowledge, Company and Contract Administrator hereto agree as follows:

## **ARTICLE 1 DEFINITIONS**

1.1 "Claims Administrator" means a licensed third-party administrator subcontracted by the Contract Administrator to adjudicate Participants' claims for benefits under the MEC, Dental, and Vision Benefit Components of the Plan.

1.2 "Employee" means a person currently employed by the Company (or an affiliated employer) who has satisfied the Company's eligibility criteria for Plan benefits.

1.3 "ERISA" means the federal Employee Retirement Security Act of 1974, as amended.

1.4 "Fringe Benefit" means a form of remuneration in addition to stated wages for the performance of services. Fringe Benefits for employees are taxable wages unless specifically excluded by a section of the Internal Revenue Code (the "Code"). Fringe Benefits are includible in gross income, are reported on Form W-2, and are subject to Federal income tax withholding, social security, and Medicare taxes. As a form of a "wage," Fringe Benefits may also be subject to state and local taxes applied to employees' gross income.

1.5 "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 CFR Parts 160 – 164).

1.6 "Network" means a group of Providers available to the Plan who have entered into or are governed by contractual arrangements under which they agree to provide health care services to Participants and accept negotiated fees for the service provided

1.7 "Participant" means Employees, dependents, and beneficiaries eligible to receive the benefits specified in the Plan.

1.8 "Plan" means the employer-sponsored health care benefit plan comprised of multiple Benefit Components and administered by Contract Administrator in accordance with this Agreement.

1.9 "Plan Administrator" means the current person, committee, partnership, or other entity designated by the Employer as the Plan Administrator as defined by ERISA and who is generally responsible for the Plan's operation.

1.10 "Plan Document" means a formal written document under which the Plan is established and operated, which may include an umbrella or "wrap document" and/or a separate Summary Plan Description ("SPD") or Certificate of Coverage.

1.11 "Plan Sponsor" means the Company offering a health care benefit plan to its Employees.

1.12 "Protected Health Information" or "PHI" means individually identifiable health information that is maintained or transmitted by a covered entity as defined in HIPAA.

1.13 "Run-Out Claim(s)" means claims for benefits incurred under the Self-Funded MEC, Dental, and Vision Benefit Components where no payment has been issued by the Claims Administrator prior to the Termination Date (as defined in Article 7), whether or not claims for such services have been submitted before the end of the Term. "Run-Out Claim(s)" includes adjustments after the end of the Term with respect to claims initially processed prior to the end of the Term. For the purposes of this Agreement, a claim is "incurred" on the date the particular service was rendered or the supply was furnished.

1.14 "Self-Fund" or "Self-Funded" means that the Company, on behalf of the Plan, has the sole responsibility to pay, and provide funds, to pay for all Plan benefits. Contract Administrator has no liability or responsibility to provide these funds.

1.15 "Summary Plan Description" or "SPD" means a written document the Company provides to Plan Participants describing the terms and conditions of coverage offered under the Plan that complies with the requirements of ERISA including, but not limited to, ERISA § 102.

## **ARTICLE 2 DUTIES AND RESPONSIBILITIES OF THE COMPANY**

2.1 Responsibility for the Plan. Company shall be considered the Plan Sponsor and Plan Administrator for purposes of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended. Company is responsible for complying with all applicable provisions under ERISA, and retains full and final authority and responsibility for the Plan and its operation, including full responsibility for all ERISA fiduciary duties, claims administration, the legal sufficiency and distribution of SPDs, and compliance with any laws that apply to Company or the Plan. Contract Administrator is empowered to act on behalf of the Plan only as stated in this Agreement.

2.2 Not Insurance. The Parties agree the Benefit Components selected under this Agreement, other than the Group Accident Benefit Component provided by 5Star Life Insurance Company, are not contracts of insurance under any Federal or State laws or regulations. Contract Administrator does not insure, guarantee or underwrite Plan liability. Company retains sole responsibility for payment of claims arising under Self-Funded Benefit Components of the Plan and all expenses incidental to the administration of the Plan.

2.3 Financial Obligation for Claims. Company shall be solely responsible for funding all approved Claims by payment of the monthly Level Funding Fee for the Term of this Agreement (except as otherwise provided herein). The Parties acknowledge and agree that the claims funding mechanism described herein is intended to reflect an Administrative Services Only contract arrangement. The Parties further acknowledge that certain state and Federal government benefit mandates may significantly change the actuarially-derived rate assumptions during the Term of this Agreement. Should such mandate be implemented during the Term of this Agreement, Contract Administrator reserves the right to change the Level Funding amount by 30-day notice to Company.

2.4 Selection of Plan and Benefit Components. Company shall be responsible for selecting, with or without the assistance of a Broker and/or Consultant of Record, to establish the Plan, the covered benefits, and funding levels. Contract Administrator does not act as Company's Broker or Consultant of Record.

2.5 Eligibility. Company shall provide accurate Employee eligibility and Participant enrollment information to Contract Administrator on Contract Administrator's designated software platform. Once a Plan is implemented, changes to Employee eligibility may be made on a prospective basis only. Contract Administrator shall not be held responsible for inaccurate or incomplete information received from Company in connection with this Agreement. Company represents and warrants that any enrollment and dis-enrollment directions it provides to Contract Administrator will be compliant with and permissible under applicable state and federal law.

2.6 Portal Access. Company shall be responsible for granting and terminating Contract Administrator's software platform access to authorized employees that require access to Plan Participant information, including claims and other Protected Health Information ("PHI"). Company agrees to indemnify Contract Administrator from and against any and all claims that may result from Company's failure to comply with HIPAA and its implementing regulations ("HIPAA").

2.7 Disclosure to Plan Participants. The Company shall be responsible to communicate to Plan Participants all information required by ERISA and other applicable laws concerning the Plan, including, without limitation, Summaries of Benefit Coverage, Summary Plan Descriptions, notices of material benefit reductions, summary annual reports, and Forms 1095-C Employer Provided Health Insurance and Offer of Coverage.

2.8 Compliance Obligations. Company agrees to hold Contract Administrator harmless from and against any and all liability, damages, costs, losses and expenses (including attorney fees) and expressly releases all claims against Contract Administrator that results from the Company's failure or alleged failure to comply with any provisions of ERISA, the Internal Revenue Code, HIPAA, the Affordable Care Act ("ACA"), or any other applicable federal or state law or regulation.

2.9 ACH Funding. Company agrees that it shall be subject to the terms and conditions of the Automated Clearing House Agreement ("ACH") associated with this Agreement (Appendix F), which obligations include (but are not limited to) mandatory ACH transaction from the Company's designated bank account for purposes of making claims payments and paying Plan-related fees.

Company further understands should there be insufficient funds in the designated bank account of Company at the time the ACH transaction is processed, Company shall be liable for all consequences including, by way of example, penalties, fees, and/or policy cancellations.

### ARTICLE 3 DUTIES AND RESPONSIBILITIES OF CONTRACT ADMINISTRATOR - GENERAL

3.1 Service Provider. Contract Administrator's responsibilities under this Agreement are limited to those of an administrator and software-as-a-service provider. Contract Administrator does not provide legal or tax advice to the Company. Contract Administrator does not serve as Company's Broker or Consultant of Record. Except as expressly stipulated elsewhere in this Agreement, Contract Administrator shall not be responsible for reporting any information to any governmental agencies. Contract Administrator is not responsible for making any determination regarding whether any funds constitute ERISA plan assets or have been handled or managed in accordance with ERISA's plan asset rules.

3.2 Responsibility for the Plan. Contract Administrator is not the Plan Administrator of the Plan. Any references in this Agreement to "administering the Plan" are descriptive only and do not confer upon Contract Administrator anything beyond certain agreed upon administration duties. Except to the extent this Agreement specifically requires Contract Administrator to have the fiduciary responsibility for a Plan administrative function, Company accepts total responsibility for the Plan for purposes of this Agreement including its benefit design, the legal sufficiency and distribution of SPDs, and compliance with any laws that apply to Company or the Plan, whether or not Company or someone Company designates is the Plan Administrator.

3.3 HIPAA Privacy and Security. The Parties acknowledge that the Plan is a Covered Entity under HIPAA and that Contract Administrator is a Business Associate of the Plan. In connection with its services under this Agreement, Contract Administrator acknowledges that it will receive or be obliged to create PHI from or on behalf of a Covered Entity. With respect to such PHI, Contract Administrator will comply with HIPAA requirements.

3.4 Subcontractors and Agents. Contract Administrator, at its sole discretion, may contract with subcontractors and agents for performance of any of the services to be performed by Contract Administrator under this Agreement, provided Contract Administrator will remain fully responsible and liable for performance of the services, even though delegated to Contract Administrator's subcontractors or agents.

3.5 Change in Law. In the event that the Plan becomes subject to Federal or State laws or regulations mandating change in the benefit structure, upon Company's approval Contract Administrator will implement such mandatory changes at the time the law becomes effective with respect to the Plan

3.6 Compliance. Contract Administrator shall comply with any applicable Federal or State statutes or regulations regarding its operations, and shall be responsible for ensuring any subcontractor or agent performs its obligations in accordance with the same.

3.7 Customer Service. Contract Administrator shall make reasonable attempts to respond promptly to inquiries from Company or agents concerning Plan eligibility, billing questions, or other administrative services provided by Contract Administrator in accordance with this Agreement.

#### ARTICLE 4

##### DUTIES AND RESPONSIBILITIES OF CONTRACT ADMINISTRATOR - ELIGIBILITY & BILLING

4.1 Eligibility and Enrollment Platform. Contract Administrator agrees to provide the information technology and data processing services necessary for Company to enroll eligible employees and their dependents in Company's benefit Plan. Contract Administrator shall provide eligibility updates to designated Benefit Component vendors and ensure employee enrollment changes are timely shared with the same.

4.2 Claims Funding. Each month, Contract Administrator shall charge Company a Level Funding Fee covering the Plan's expected Claims funding obligations (the "Claims Account") and Contract Administrator's administrative fees for providing services under this Agreement. The Level Funding Fee includes program access fees, vendor payments, and broker commissions. The Level Funding Fee will be determined by Contract Administrator on an annual basis. The Parties agree that should any state or Federal government impose benefit mandates that substantially change the expected Claims funding target during the Term of this Agreement, the Contract Administrator reserves the right to change the Level Funding amount by 30-day notice to Company.

4.3 Employee Records. Contract Administrator shall maintain records related to employee and dependent eligibility and enrollment in the Plan and use its reasonable best efforts to follow and enforce Plan terms related to eligibility and enrollment of employees and dependents. In addition, Contract Administrator shall use its reasonable best efforts to maintain a record for each employee with the employee's full name, social security number, mailing address (insofar as available), date of birth, covered dependents and, to the extent necessary, a summary of the data received from Company reports on which eligibility determinations were made.

4.4 Recordkeeping. Contract Administrator shall retain the Plans' records and files it maintains for a period of six (6) years from last use or as otherwise required by law to comply with applicable record retention requirements.

4.5 Data and Compilations. All data and copies compiled by Contract Administrator therefrom, in any form or format whatsoever, shall be and remain the property of Contract Administrator. Contract Administrator shall use its reasonable best efforts to assist the Company by providing the data or compilations derived by Contract Administrator to the Company or a designated third party upon request, including transcribing the data in the format agreed to by the Parties. Contract Administrator may charge reasonable fees for converting data in the format agreed to by the Parties. This provision shall survive termination of the Agreement.

4.6 Consolidated Billing, Collections, and Remittances. Contract Administrator works with Benefit Component subcontractors and outside vendors in order to provide package pricing for Company's selected Plan. Contract Administrator shall process ACH transactions from Company's designated bank account and disburse appropriate funding to the aforementioned Benefit Component subcontractors and outside vendors.

4.7 Banking and Finance Services. Contract Administrator shall provide all billing, collection, claims and vendor payment services on behalf of the Company and its Plan. Company is responsible to ensure Contract Administrator has all necessary information to provide these services.

4.8 COBRA Administration. If Company is subject to COBRA (employers with twenty (20) or more employees on more than 50% of business days in the prior calendar year), Contract Administrator shall provide COBRA Administrative Services for the Plan. It is understood that Contract Administrator's provision of COBRA Administrative Services to Company does not relieve the Company of their notification responsibilities of qualifying events and the time limits defined by COBRA regulation for such notification. The Company agrees to indemnify and hold Contract Administrator harmless from all claims, loss, damage and expense arising from any failure of Company to provide Contract Administrator with timely notification of qualifying events.

## ARTICLE 5

### DUTIES AND RESPONSIBILITIES OF CONTRACT ADMINISTRATOR – CLAIMS ADMINISTRATION

The following Article 5 pertains to the following Benefit Components only: Minimum Essential Coverage benefit, Direct.Fit™ Dental, Direct.Fit™ Vision Club.

5.1 Claims Adjudication. Licensed third-party Claims Administrators, subcontracted by Contract Administrator to provide claim adjudication services for the above-referenced Benefit Components, shall process and pay healthcare claims in accordance with the appropriate Benefit Components' Summary Plan Description(s) and/or Certificate(s) of Coverage (the "Plan Documents"). The Claims Administrator will use its reasonable business judgment in performing its duties under this Agreement, and will administer benefits described in the Plan Documents in accordance with customary administrative standards and practices for Self-Funded group health benefit plans.

5.2 Interpretation Authority. The Claims Administrator has the authority to interpret and apply the terms of the Plan Documents to determine whether and to what extent a Plan Participant has coverage for a requested service. Claims Administrator shall ensure such claims-related activities are performed in compliance with all applicable Federal or State statutes or regulations including, but not limited to ERISA, the ACA and HIPAA. However, Company as the Plan Sponsor, shall maintain full control over the Plan including the responsibility for Plan benefit design, eligibility, enrollment, employee communications, claims payment and Plan funding.

5.3 Explanation of Benefits. Claims Administrator shall furnish each Plan Participant with an explanation of each Claim that is paid, rejected, or suspended describing the specific reason for any adverse benefit determination, in accordance with all applicable statutes and regulations, including but not limited to ERISA.

5.4 Network Access. Claims Administrator shall provide Plan Participants with access to a national Network of licensed healthcare providers as applicable to each Benefit Component. Contract Administrator shall provide appropriate Network information to be included with Company's SPD or other such benefit communication documents.

5.5 Plan Documents. Contract Administrator shall be responsible for developing, maintaining, and providing to Company an electronic copy of a Summary Plan Description ("SPD"), Summary of Benefits and Coverage (for the MEC Benefit Component only), and/or Certificate(s) of Coverage (Direct.Fit™ products) for Company's distribution to eligible employees as required by ERISA and the Affordable Care Act. Contract Administrator will not be responsible for printing, mailing, or distribution of these documents.

5.6 Self-Funding. The Benefit Components identified in this Article 5 are Self-Funded. Contract Administrator does not insure, guarantee or underwrite any Plan liability. Benefits provided under these Benefit Components are not contracts of insurance under any Federal or State laws or regulations. Company retains sole responsibility for payment of claims arising under the Plan and all expenses incidental to the administration of the Plan.

5.7 Plan Assets. In the event that the Plan is found to have Plan assets, the Company shall have absolute authority with respect to such Plan assets, and Contract Administrator shall neither have nor be deemed to exercise any discretion, control or authority with respect to the disposition of Plan assets.

## **ARTICLE 6**

### **PAYMENT OF CLAIMS AND COMPENSATION TO CONTRACT ADMINISTRATOR**

6.1 Package Rate. Each month, Contract Administrator shall charge Company the Package Rate as outlined in the agreed-upon Rate Schedule (attached hereto in Schedule F). This Package Rate covers the Self-Funded Benefit Components' claims funding obligations (the "Claims Account"), Sedera Membership dues (Fringe Benefit Component), access fees and/or premiums owing to other Benefit Component vendors, broker commissions, and Contract Administrator's fees for providing services under this Agreement. The Package Rate will be determined by Contract Administrator on an annual basis.

6.2 Taxes and Other Surcharges. If at any time, during or after the term of this Agreement, Contract Administrator is required to pay any state or federal taxes, assessments or other fees on behalf of the Plan, or interest assessed or accrued on any taxes or surcharges attributable to the Plan, Company will reimburse Contract Administrator an additional amount equal to these expenses.

6.3 Claim Payments for Self-Funded Benefit Components. Upon receipt of a claim for benefits under one of Benefit Components listed in Article 5, the subcontracted Claims Administrator will review and make an initial determination of the amount of the claim payment, if any, to which the Plan Participant is entitled under the terms of the Plan, and arrange to make a claim payment in accordance with the Plan and consistent with applicable law. Provided, however, Claims Administrator will only make a claim payment if: (i) all payments due to Contract Administrator under



the terms of this Agreement are paid, and (ii) the Company performs all of its obligations under this Agreement. Notwithstanding any provisions to the contrary, if Company has failed to pay when due any amount owed to Contract Administrator, neither Contract Administrator nor subcontracted Claims Administrator shall be under no obligation to make any further claim payments and shall incur no other obligations under this Agreement until such default is corrected.

6.4 Separate Accounting of Benefit Components. Each Self-Funded Benefit Component selected by Company (e.g., MEC, Dental, Vision) shall be accounted separately. Claims funding accounts shall be set up for each Benefit Component. Funds held in the separate claims funding accounts cannot be intermingled.

6.5 Self-Funded Benefit Component Claims Account Reconciliation/Refund. In the event of termination of this Agreement or the discontinuance of a Benefit Component under the Plan, Contract Administrator will perform a final reconciliation of Company's Benefit Component Claims Accounts no later than four (4) months after the end of the Agreement. The formula for the reconciliation amount shall be:

Claims funding payments made by Company over the term of the Agreement Less claim payments made by subcontracted Claims Administrator under this Agreement, up through the end of the Run-Out Period which shall be ninety (90) days from the date of the Plan termination.

If the reconciliation amount is positive, Contract Administrator will refund the full amount (100%) of the excess amount to the Company as a lump sum check. If the reconciliation amount is negative, Contract Administrator shall be entitled to fully recover all amounts due, including any expenses that may be incurred in the performance of their duties under this Agreement after the termination date and/or collecting delinquent amounts owed.

## ARTICLE 7 TERM AND TERMINATION

7.1 Term. This Agreement is for the term beginning on the Effective Date hereof, and running for a period of twelve (12) calendar months. After this Initial Term, the Agreement shall continue in full force and effect from year to year thereafter unless terminated as provided in this Article 7. Each one-year period during the term of this Agreement shall be referred to as the "contract year."

7.2 Termination for Convenience. Either party may terminate this Agreement without cause by providing sixty (60) days advance written Termination Notice to the other party. The termination of the Agreement will take place on the date as indicated in the Termination Notice. Company understands that termination ends all administrative services, including but not limited to bill generation, eligibility management, claims adjudication services, and COBRA administration services, on the date indicated in the Termination Notice. Notwithstanding the foregoing, Run-Out Claims shall be administered subject to the provisions stated in Section 7.5.

7.3 Termination by Contract Administrator. Contract Administrator may immediately terminate this Agreement upon: (i) the failure of the Company to pay any amount owed to the Contract Administrator under this Agreement within fifteen (15) days of the monthly scheduled payment date; or, (ii) the Company's failure to cooperate with Contract Administrator's efforts to satisfy its obligations under this Agreement.

7.4 Material Breach. A material breach is the failure by one party (the breaching party) to perform or carry out a function or duty required by the terms of this Agreement, where the failure to perform that function or duty materially impairs the non-breaching party's ability to perform, or deprives the non-breaching party of a material benefit contemplated under this Agreement. The non-breaching party may terminate this Agreement immediately upon written notice for cause to the other party if the other party: (i) materially breaches its obligations under this Agreement; and, (ii) such breach remains uncured after ten (10) days' notice of breach from the non-breaching party specifying in reasonable detail the nature of the breach.

7.5 Run-Out Claims. In the event of Plan or Benefit Component termination, Claims Administrators shall continue to process Run-Out Claims for the MEC, Dental, and Vision Self-Funded Benefit Components provided Company remains current on its payment obligations to Contract Administrator. In the event Contract Administrator receives any claims for reimbursement more than ninety (90) days after the end of this Agreement, Contract Administrator shall forward such claim to Company for payment purposes.

7.6 Effect of Termination. Termination of this Agreement does not excuse Company from forwarding to Contract Administrator any and all sums due under the Package Rate obligations.

## **ARTICLE 8 AUDIT AND REVIEW**

8.1 Right to Audit. The Company, in its sole discretion and expense, shall have the right to audit, or hire a third party auditor to audit any and all business practices and procedures Contract Administrator as they pertain to this Agreement, including, but not limited to, recordkeeping and billing practices and procedures. Company or its designated agent shall perform any such audits at mutually agreed to times during regular business hours. Company shall provide prior reasonable written notice of an audit. Company and/or the authorized agent shall agree in writing not to disclose proprietary or confidential information of Contract Administrator obtained during inspection, audit or copying of records pursuant to this section. The Company shall be liable for any and all fees charged by the Company's authorized auditor.

## **ARTICLE 9 COMPLAINTS AND LITIGATION**

9.1 Regulatory Actions. Contract Administrator will promptly notify Company of any complaint of which Contract Administrator becomes aware, to or from any regulatory agency, including but not limited to, any state insurance department, in connection with any transaction involving the Company or Plans.

9.2 Legal Proceedings. Each Party to this Agreement shall provide immediate notice, via telephone, email, or fax, of receipt of any legal process wherein the other parties are designated a defendant, which relates to this Agreement. A copy of such legal process shall be faxed, emailed or sent immediately by one-day express mail to the other parties. Except to the extent a party is entitled to indemnification or recovery of attorney fees or costs as provided elsewhere in this Agreement, each party hereto shall be responsible at its own expense for defending itself in any litigation brought against it, whether or not the other party hereto is also a defendant, arising out of or in connection with this Agreement.

## **ARTICLE 10 INDEMNIFICATION**

10.1 Company agrees to indemnify, defend and hold Contract Administrator and its officers, directors, employees and agents harmless from and against any and all claims, loss, damages and expenses, including court costs and attorney fees and expenses resulting from or arising out of any claims, demands, or litigation brought against Contract Administrator due to the negligence or willful misconduct of the Company in administering its Plans, performing duties under this Agreement, or the failure to comply with any term of this Agreement. Company shall have the right to intervene or participate in the defense of any such action at its option. The Parties agree to keep one another informed and apprised of all developments in any action described in this section.

10.2 Contract Administrator agrees to indemnify and hold harmless the Company from and against any and all claims, loss, damage and expense, including court costs and attorney fees and expenses, resulting from or arising out of the claims, demands or litigation brought against the Company due to the negligence, willful misconduct of Contract Administrator or its officers, directors, employees or agents in performing duties under this Agreement or the failure to comply with any term of this Agreement.

## **ARTICLE 11 RELATIONSHIP OF THE PARTIES**

11.1 Not a Plan Administrator. In performing their obligations under this Agreement, Contract Administrator is providing administrative service to the Company's Plans and the rights and responsibilities of the Parties shall be determined in accordance with the law of agency, except as otherwise provided herein. For the purposes of ERISA and applicable state legislation, the Company shall be the Plan Administrator, and in no instance shall Contract Administrator be the Plan Administrator

11.2 Not a Fiduciary. Contract Administrator shall not be a fiduciary of the Plan for any purposes, including the Employee Retirement Income Security Act of 1974 ("ERISA")

11.3 Independent Contractor. It is understood and agreed that Contract Administrator is and shall remain an independent contractor with respect to the services performed pursuant to this Agreement. Contract Administrator nor any of its employees or service providers shall be considered an employee of the Company.

## ARTICLE 12

### CONFIDENTIALITY AND PROPRIETARY INFORMATION

12.1 Proprietary Rights. Company acknowledges that Contract Administrator has developed certain symbols, trademarks, service marks, designs, data, processes, procedures and information, all of which are proprietary information and trade secrets of Contract Administrator (the "Materials"). Company agrees that it will not use the Materials, except as expressly contemplated by this Agreement without the prior written consent of Contract Administrator and agrees to cease any and all usage of the Materials immediately upon the termination of this Agreement.

12.2 Information Technology Services. Company acknowledges and agrees that Contract Administrator owns all right, title and interest in the computer software and hardware systems used by Contract Administrator to perform administrative services for the Plans, including any related software or deliverables and modifications, updates, releases or enhancements thereto whether or not provided to the Company. Nothing in this Agreement shall confer the Company any right of ownership or use in any such items.

12.3 Confidential and Proprietary Information. Unless agreed to in writing, all information received by the Parties during the course of this Agreement remains sensitive, confidential and proprietary information of the other party, regardless of whether the information is specifically marked "confidential" or "proprietary". No party shall disclose or use any information received from the other party during the term of this Agreement or obtained during the course of business dealings between the Parties at any time without prior written authorization of the party from which it was received. As part of this Agreement, Contract Administrator shall take reasonable steps to protect the confidentiality and proprietary nature of the Company or Plans' records and files it maintains.

12.4 Required Notice. If confidential or proprietary information is subject to compulsory legal process, the party subject to compulsory process shall give the other party adequate notice so as to permit an opportunity to object to such production.

12.5 PHI. The Parties' obligations with respect to the use and disclosure of PHI are outlined in the Business Associate Agreement attached hereto and incorporated herein.

12.6 Duration. The provisions in this Section 12 shall survive termination of this Agreement.

## ARTICLE 13

### DISPUTE RESOLUTION

13.1 In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the Parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with one another in good faith and, recognizing their mutual interests, attempt to reach an equitable solution acceptable to both Parties. If they do not reach a resolution within a period of sixty (60) days from the date initial written notice of dispute is provided to a party then, upon notice by either party to the other, the dispute shall be settled by arbitration administered by the American Arbitration

Association in accordance with the provisions of its Commercial Arbitration Rules. In no event may the arbitration be initiated more than one year after the date one party first gave written notification of the dispute to the other party. A single arbitrator engaged in the practice of law, which is knowledgeable about ERISA and employee benefit plan administration, will conduct the mediation under the then current rules of the AAA.

## **ARTICLE 14 MISCELLANEOUS**

14.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

14.2 Headings and Interpretation. The section headings used in this Agreement are solely for convenience of reference, are not part of this Agreement, and are not to be considered in construing or interpreting this Agreement. This Agreement shall be interpreted according to its plain meaning and shall not be construed against any party by reason of its having drafted any or all of this Agreement.

14.3 Severability. If a court or arbitrator refuses to enforce any provisions of this Agreement the unenforceable provision shall be deemed eliminated from the Agreement and the remainder of the Agreement shall be enforced.

14.4 Waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

14.5 Entire Agreement. This Agreement, any schedules and exhibits hereto, and written policies, procedures or documentation of the Plans or the Company that are referenced in this Agreement constitute the entire agreement between the parties pertaining to its subject matter and supersedes all prior and contemporaneous agreements, representation, and understandings either oral or written of the Parties. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or by anyone acting on behalf of any party that are not embodied herein. No supplement, modification, or amendment of this Agreement shall be binding unless in writing and executed by all Parties.

14.6 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties if permitted under the terms of this Agreement.

14.7 Notices. Any notice required or permitted to be given by any party to another pursuant to this Agreement or any applicable law or regulation shall be in writing. Notices shall be deemed to have been properly given, rendered, and delivered (i) when received if delivered by hand; (ii) the next business day if placed with a reputable express carrier for delivery during the morning of the following business day; or (iii) three (3) days after depositing in the U.S. mail for delivery by registered or certified mail, return receipt requested, postage prepaid and addressed to the

appropriate party at the address set forth below or such other address as specified by the party. Any party may, by notice as aforesaid, designate a change of address or addresses for notices, statements, or other communications.

Company:	<u>(Company Legal Name)</u>
	<u>Attn: (                      )</u>
	<u>(Address)</u>
	<u>(City, State and Zip Code)</u>

DWS Holdings, LLC:	LyfeSystems
	Attn: Michele Payton
	PO Box 697
	La Conner, WA 98257

14.8 No Third-Party Beneficiaries. This Agreement is not intended to confer any rights on any individuals or entities other than parties to this Agreement.

14.9 Force Majeure. No party shall be liable for failing to perform its obligations hereunder if such failure is the result of fire, weather related catastrophes, acts of God, embargo, strike, war, governmental rule or regulation, or, any other circumstance beyond a party's reasonable control that prevents such party from performing its obligations in accordance with the terms contained herein.

14.11 Counterparts. This Agreement may be executed in counterparts each of which shall have the same force and effect of the original.

14.11 Assignment. This Agreement may not be assigned without the prior written approval of the Parties, except that a party may assign this agreement without consent to any affiliate of such party, an entity that acquires all or substantially all of the assets of such party; and a successor in a merger or acquisition. The Agreement shall terminate automatically on the occurrence of any assignment not in accordance with this section. Required consent shall not be unreasonably withheld or delayed.

14.14 Appendices. The following documents are attached to this Agreement and incorporated herein by reference:

- Appendix A: Plan Adoption Agreement
- Appendix B: HIPAA Business Associate Agreement
- Appendix C: COBRA Administrative Services Agreement
- Appendix D: Sedera Fringe Benefit Adoption Agreement
- Appendix E: Group Enrollment, Rate Schedule, ACH Documentation



**APPENDIX A**  
**ERISA PLAN ADOPTION AGREEMENT**

The undersigned Employer, by executing this **ERISA Plan Adoption Agreement**, adopts this Group Health Plan comprised of the following Benefit Components for the benefit of its Employees and their eligible dependents as provided in this document: (Check those that apply)

- ☒ Minimum Essential Coverage ("MEC"): a self-funded group health plan providing Preventive Benefits as required by the Affordable Care Act ("ACA")
- ☐ Direct.Fit™ Dental, a self-funded group dental plan
- ☐ Direct.Fit™ Vision Club, an Excepted Benefit Health Reimbursement Arrangement ("EBHRA") providing funds for vision expenses at designated participating providers

By signing below, the Employer Acknowledges

- These Benefit Components comprise an employee welfare benefit plan under the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, and is subject to all the regulations pertaining thereunto.
- The Plan Sponsor intends for these Benefit Components to be in compliance with Sections 105 and 106 of the Internal Revenue Code of 1986 (the "Code") and that the costs of benefits provided pursuant to these Benefit Components are intended to be eligible for deduction by the Employer and exclusion from Participants' gross income.
- These Benefit Components are funded solely by the general assets of the Employer. As such, each Component is considered a separate and distinct "unfunded" plan, and there are no Plan Assets.
- This Plan is a "Covered Entity" for the purposes of the Privacy Rules under the Health Insurance Portability and Accountability Act ("HIPAA"), as amended.

**Authorized Signatures:** \_\_\_\_\_

By \_\_\_\_\_ Date \_\_\_\_\_  
Print Name

1. **Adopting Employer Information:**
- (Company Legal Name) \_\_\_\_\_
- (Address) \_\_\_\_\_
- (City, State, Zip Code) \_\_\_\_\_
- Phone: \_\_\_\_\_
- EIN: \_\_\_\_\_

The **Plan Sponsor** and **Plan Administrator** shall be as designated in the Plan. If the Plan contains no designation, the Employer shall fill both roles.

The Employer will accept service of process for this Plan as the Plan Administrator.

The Employer has the discretionary authority to:

- Interpret the Plan in order to make eligibility and benefit determinations;
- Make factual determinations as to whether any individual is eligible and entitled to receive any benefits under the Plan; and,
- Terminate or Amend this Plan.

2. **Effective Date:** \_\_\_\_\_
3. **Plan Year:** January 1 through December 31
4. **Eligible Employees:** All W-2 Employees of the Employer are eligible to participate, **except:**
  - ☒ Part-time Employees (those Employees expected to work less than \_\_\_\_ Hours per week);
  - ☒ Employees covered by a collective bargaining agreement unless the collective bargaining agreement requires the employee to be included within the Plan;
  - ☒ Employees who the Employer classifies as temporary or seasonal (those Employees expected to work for the Employer less than 6 months of the year);
  - ☒ Leased or Temporary Employees;
  - ☒ Nonresident aliens
5. **Entry Date:** First (1st) day of the month following \_\_\_\_ days eligible employment.
6. **Governing Law:** This Plan will be operated under the laws of the State of \_\_\_\_\_ unless otherwise preempted by ERISA.



## APPENDIX B

### HIPAA BUSINESS ASSOCIATE AGREEMENT

This Agreement between Company and Contract Administrator (the “Business Associate”) is entered into for the purpose of complying with the privacy and security regulations issued by the Department of Health and Human Services (“HHS”) under the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009 (the “HITECH Act”), and related regulations promulgated by the Secretary (“HIPAA Regulations”).

#### RECITALS

**WHEREAS**, the Company is a “Covered Entity,” as that term is defined under HIPAA, and as such, is required to comply with the requirements thereof regarding the confidentiality and privacy of Protected Health Information; and

**WHEREAS**, Contract Administrator (“Business Associate”) provides or will provide administrative services to the Company; and

**WHEREAS**, the Company and Business Associate wish to allow for the exchange of information between the Company and Business Associate in compliance with the Standards for Privacy of Individually Identifiable Health Information described in 45 CFR Part 160 and Part 164, Subparts A and E, as amended (“Privacy Rule”); and

**WHEREAS**, the Company and Business Associate wish to provide for the security of the Company’s electronic protected health information in compliance with the security standards described in 45 CFR §§ 164.308(b)(1) and 164.314(a), as amended

**NOW, THEREFORE**, in consideration of the mutual promises herein contained, the parties hereby agree as follows:

The exchange of protected health information, including the exchange of electronic protected health information, as defined below, between the Company and Business Associate, shall only occur in accordance with the provisions described herein.

#### I. Definitions

- A. In General. Capitalized terms used in this Agreement are not otherwise defined herein shall have the same meaning as those terms set forth in 45 CFR Parts 160, 162, and 164 and the HITECH Act.
- B. Specific Definitions.
  - 1. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR § 160.103, and in reference to the parties to this Agreement, shall mean APEX MANAGEMENT GROUP.
  - 2. “Covered Entity” shall generally have the same meanings as the term “covered entity” at 45 CFR § 160.103, and in reference to the parties to this Agreement, shall mean Company.
  - 3. “Electronic Protected Health Information” (“ePHI”) means Individually Identifiable Health Information that is transmitted by Electronic Media or that is maintained in Electronic Media.
  - 4. “Electronic Media” means (1) electronic storage media, including computer hard drives and any removable/portable digital memory medium such as

magnetic tape or disk, or (2) transmission media used to exchange information already in electronic storage media, *e.g.*, the internet.

5. “Individual” means the person who is the subject of PHI and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
6. “PHI” means Protected Health Information as defined at 45 CFR § 160.103.
7. “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

## **II. Use and Disclosure of PHI**

- A. In General. Business Associate agrees not to use or disclose PHI it creates for or receives from the Covered Entity other than as permitted or required by this Agreement or as required by law.
- B. Permitted Uses and Disclosures of PHI by Business Associate. Except as otherwise limited by this Agreement, the Business Associate may use or disclose PHI to perform the functions and activities, or to provide the services for, or on behalf of, the Covered Entity as specified in Business Associate’s services agreement with the Covered Entity, provided such use or disclosure of PHI would not violate a) the Privacy Rule, if used or disclosed by the Covered Entity or b) the minimum necessary under any policies and procedures of the Covered Entity.
- C. Prohibition on Unauthorized Use or Disclosure. Business Associate will neither use nor disclose PHI it creates for or receives from the Covered Entity except as permitted or required by this Agreement, or as required by law. Covered Entity shall not request that Business Associate use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity.
- D. Information Safeguards. Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of PHI it creates for or receives from the Covered Entity other than as provided for by this Agreement.
- E. Duty to Inform and Mitigate. Business Associate agrees to immediately report to the Covered Entity any use or disclosure of PHI not permitted by this Agreement of which it becomes aware. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate that violates the requirements of this Agreement.
- F. Sub-Contractors and Agents. Business Associate agrees to ensure that any agent or subcontractor to whom it provides PHI received from the Covered Entity, or created for or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Business Associate agrees to execute an agreement with any agent or subcontractor containing the same restrictions and conditions

governing the subcontractor's or agent's use and disclosure of PHI as set forth in this Agreement

### **III. PHI Access and Amendment**

- A. Access. Business Associate agrees to provide prompt access to PHI in a Designated Record Set to an Individual pursuant to the requirements of 45 CFR § 164.524.
- B. Amendment. Within 30 days of receiving a request from the Covered Entity, Business Associate agrees to make amendment(s) to PHI in a Designated Record Set, pursuant to 45 CFR § 164.526.

### **IV. Accounting of Disclosures**

So that the Covered Entity may comply with 45 CFR § 164.528, Business Associate agrees to do the following:

- A. Inspection of Books and Records. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI relating to the use and disclosure of PHI created for or received from or on behalf of Covered Entity, available to the Covered Entity, or to the Secretary, in a time and manner mutually agreed to by Business Associate and Covered Entity, or as designated by the Secretary, for purposes of determining the Covered Entity's compliance with the Privacy Rule.
- B. Tracking Disclosures. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- C. Individual Request for Disclosure. Business Associate agrees to provide to an Individual information collected in accordance with Section IV(B) herein in response to a request by an Individual for an accounting of disclosures of PHI, in accordance with 45 CFR § 164.528, and to provide Covered Entity with a copy of its response to the Individual.

### **V. Notices to Business Associate**

- A. Notice of Limitations in Privacy Practices. Covered Entity shall notify Business Associate of any limitation(s) described in its notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- B. Notice of Changes in Permission to Use or Disclose PHI. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- C. Notice of Restrictions Agreed to By Covered Entity. Covered Entity shall notify Business Associate of any restriction applicable to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

## VI. HIPAA Security Provisions

Pursuant to the provisions of 45 CFR § 164.314(a)(2)(i), Business Associate agrees that it shall:

- A. 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 Company, as required by the provisions of Subpart C of 45 CFR Part 164;
- B. Ensure that any agent, including a subcontractor, to whom Business Associate provides ePHI agrees to implement reasonable and appropriate safeguards to protect it; and
- C. Report to the Company any Security Incident of which Business Associate becomes aware.

## VII. Electronic Data Interchange Requirements

Business Associate agrees that all transactions conducted pursuant to this Agreement shall be conducted as standard transactions described in 45 CFR Part 162 and that any and all actions taken or authorized by Business Associate pursuant to this Agreement shall comply with the requirements of 45 CFR Part 162. Business Associate further agrees that it will require any agent or subcontractor conducting transactions relating to the Covered Entity to also comply with the applicable requirements of 45 CFR Part 162.

## VIII. HITECH Act

- A. Compliance with HITECH Act. Pursuant to the HITECH Act, Business Associate will ensure that, with respect to the Covered Entity's PHI, its privacy and security procedures comply with the HITECH Act and any rules and regulations promulgated thereunder, including regulations pertaining to Breaches of Unsecured Protected Health Information under 45 CFR Parts 160 and 164. To the extent not referenced or incorporated herein, requirements applicable to Business Associate under the HITECH Act are hereby incorporated by reference into this Agreement. Business Associate agrees to comply with each of the applicable requirements of the HITECH Act, including compliance with the Privacy Rule and Security Rule, monitoring federal guidance and regulations promulgated under the HITECH Act, and timely compliance with such guidance and regulations as of the applicable effective dates. The parties agree to amend this Agreement as necessary to comply with applicable requirements of the HITECH Act.
- B. Breach of Unsecured Protected Health Information. In the event of a potential Breach of Unsecured Protected Health Information as described in 45 CFR Section 164.402:
  - (1) *Risk Assessment.* Business Associate shall determine whether a Breach of Unsecured Protected Health Information has occurred based on a risk assessment that includes review of at least the following factors: (i) the nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used the protected health information or to whom the disclosure was made; (iii) whether the protected health information was actually acquired or viewed; and (iv) the extent to which the risk to the protected health information has been mitigated. Within 20 days after the discovery of a potential Breach,

Business Associate shall provide the results of its risk assessment in writing to Covered Entity.

- (2) *Notification to the Covered Entity.* If Business Associate determines that there has been a Breach of Unsecured Protected Health Information by either Business Associate or one of its agents or subcontractors, Business Associate shall immediately notify Covered Entity of the Breach and include the following information in such notification: (1) the names of the individuals whose information was Breached, (2) a description of the circumstances of the Breach, (3) the date of the Breach, (4) the date of discovery of the Breach, (5) the information Breached, (6) any steps affected individuals should take to protect themselves from potential harm, (7) the steps Business Associate (or its agent) is taking to investigate the Breach, mitigate losses, and protect against future Breaches, and (8) contact information for individuals to obtain more information regarding the Breach, including a toll-free telephone number, e-mail address, website, or postal address.
  - (3) *Notification to Affected Individuals.* Business Associate shall notify the individuals affected by the Breach in accordance with requirements of the HITECH Act and regulations promulgated thereunder, or reimburse the Covered Entity for any costs associated with the Covered Entity making such notification. If Business Associate provides notice to the individuals affected by the Breach, it shall provide Covered Entity with a copy of such notice.
  - (4) *Notification to the Media or the Secretary.* To the extent required by the HITECH Act and regulations promulgated thereunder, Business Associate shall notify the media or the Secretary of a Breach in the form and manner required by the HITECH Act and regulations promulgated thereunder, and shall provide Covered Entity with a copy of such notice.
  - (5) *Breach Log.* Business Associate will maintain a system for logging Breaches of Unsecured Protected Health Information such that the Covered Entity will be able to comply with the notification requirements of 45 CFR § 164.408.
- C. Securing PHI. Business Associate shall use its best efforts to secure PHI in accordance with 42 U.S.C. § 17932(h) and the related regulations at 45 CFR Part 164, subpart D, as well as any guidance issued by the Secretary that specifies secure technologies and methodologies, such that the amount of “Unsecured PHI” maintained by Business Associate is limited to the greatest extent possible.
- D. Termination for Cause by Business Associate. If Business Associate knows of a pattern of activity or practice of the Covered Entity that constitutes a material breach or violation of this Agreement, Business Associate shall provide the Covered Entity with a reasonable opportunity to cure the breach or terminate this Agreement and the underlying services agreement if cure is not feasible.

## **IX. Term and Termination**

- A. Term. This Agreement shall be effective as of the date Business Associate first receives PHI, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI,

protections are extended to such information, in accordance with the termination provisions in this Section.

- B. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
- (1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or
  - (2) Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.
- C. Effect of Termination.
- (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate relating to Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
  - (2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon Covered Entity's written acknowledgment that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI, and shall limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

## **X. Miscellaneous**

- A. Independent Contractors. Covered Entity and Business Associate are independent contractors and this Agreement does not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties. Neither party has the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent, except as otherwise expressly provided in this Agreement.
- B. Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996. The parties further agree that this Agreement cannot be changed, modified, or discharged except by an agreement in writing and signed by both parties.
- C. Survival. The respective rights and obligations of Business Associate under Section IX(C) of this Agreement shall survive the termination of this Agreement.
- D. Interpretation. Any ambiguity in this Agreement shall be resolved to permit the Covered Entity to comply with the Privacy Rule.

- E. Severability. If any provision hereof shall be deemed to be unenforceable by law, the remaining provisions of this Agreement shall be enforceable as if this Agreement had been executed with the invalid provision thereof eliminated. In the event of any conflict between this Agreement and any other agreement between the Business Associate and the Company, this Agreement shall control.

## APPENDIX C

### COBRA ADMINISTRATIVE SERVICES

Contract Administrator shall provide COBRA Administrative Services to the Company in accordance with the terms of this Agreement.

#### XI. Definitions

- A. “COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985, and all rules and regulations promulgated thereunder.
- B. “Continuation Coverage” means the extended coverage period under a group health plan available to a Qualified Beneficiary experiencing a Qualified Event in accordance with COBRA.
- C. “Qualified Beneficiary” means an individual who is eligible for continuation coverage under COBRA as defined in Treas. Reg. § 54.4980B-3, Q/A-1 (a)(1).
- D. “Qualifying Event” means:
  - 1. death of a covered employee;
  - 2. termination of the covered employee for reasons other than gross misconduct or the reduction of hours of employment with the Company;
  - 3. divorce or legal separation of the covered employee;
  - 4. eligibility of the covered employee for Medicare;
  - 5. a covered dependent ceasing to be eligible for group health plan coverage; or
  - 6. Company’s commencement of bankruptcy proceedings under Title 11 of the U.S.C., if Company sponsors a retiree health plan.
- E. “Monthly Contribution Amount” means the amount a Qualified Beneficiary must pay for Continuation Coverage for group health plan coverage.
- F. “Plan” means the Company’s group health benefits which are subject to the continuation requirements of COBRA.

#### XII. Responsibilities of Company

During the term of this Agreement, Company shall:

- A. Provide the Initial COBRA Notice describing COBRA rights to each employee covered in the Company’s group health plan in the form and manner and in the timeframe required by COBRA.
- B. Retain substantiating materials demonstrating compliance with the Initial COBRA Notice requirement in a form and manner in compliance with COBRA.
- C. **Company shall retain sole and exclusive responsibility for providing written notification to Contract Administrator within 30 days of receiving notice from a Qualified Beneficiary of the Qualifying Event or in the event of a covered employee’s termination or change in employment status with Company.** Company shall provide written notice for Qualifying Events arising from a covered employee’s employment termination or other changes in employment status in the monthly enrollment reports, if the enrollment reports will be received by Contract Administrator within 30 days of the employee’s termination or change in employment status. The information provided in the notice required by Company under this section shall include:



1. Qualified Beneficiary's Name, Social Security Number;
  2. Date and Type of Qualifying Event;
  3. Current Mailing Address of the Qualified Beneficiary; and,
  4. Any other information reasonably requested by Contract Administrator and available to Company.
- D. If enrolled in the Plan, an Employee's Spouse and Children are Qualified Beneficiaries with independent rights. Company shall provide the appropriate information for each covered dependent within 30 days of the Qualifying Event.
- E. Provide Contract Administrator with any updated information about the eligibility of a Qualified Beneficiary available to Company, including, but not limited to: a change in address of the Qualified Beneficiary; the death or disability of a Qualified Beneficiary; the divorce or separation of a Qualified

### **XIII. Responsibilities of Contract Administrator**

During the term of the Administrative Services Agreement, Contract Administrator will:

- C. During the term of the Administrative Services Agreement, Contract Administrator will:
1. Provide COBRA Election Notices to Qualified Beneficiaries;
  2. Bill Qualified Beneficiaries for the Monthly Contribution Amounts;
  3. Collect Monthly Contribution Amounts from Qualified Beneficiaries and remit COBRA premium amounts received from Qualified Beneficiaries to the Company's group health plans;
  4. Provide Notice of Unavailability of COBRA coverage to individuals; and
  5. Provide Notice of Early Termination of COBRA coverage to Qualified Beneficiaries.
- D. Contract Administrator will provide notification of the right to elect COBRA continuation coverage under the Plan to individuals who have been identified by the Company as Qualified Beneficiaries. Contract Administrator will mail the notice by first class mail to the mailing address provided by the Company. The notice will be mailed within fourteen (14) calendar days from receipt of the notification from the Company. The notice will specify coverage(s) under the Plan for which the Qualified Beneficiary is eligible, the COBRA premium amount, and due date.
- E. Unless otherwise notified by the Company in writing, Contract Administrator shall conclusively presume that a Qualified Beneficiary's eligibility for COBRA continuation coverage under the Company's group health plan has not terminated by reason of coverage under another group health plan.
- F. Contract Administrator will determine the applicable COBRA premium for each Qualified Beneficiary and may include and retain in the premium amount an administrative fee of 2% as permitted by Internal Revenue Code § 4980B(f)(2)(C).



APPENDIX D  
SEDERA – LYFESTYLE SPENDING ACCOUNT™  
FRINGE BENEFIT ADOPTION AGREEMENT

**DEFINITIONS**

Fringe Benefit means a form of remuneration (including property, services, case or cash equivalent) in addition to stated wages for the performance of services. Fringe benefits for employees are taxable wages unless specifically excluded by a section of the Internal Revenue Code (the "Code"). Fringe Benefits includible in gross income are reported on Form W-2 and are generally subject to Federal income tax withholding, social security, and Medicare taxes. As a form of "wage," Fringe Benefits may also be subject to state and local taxes applied to employees' gross income.

Lifestyle Spending Account ("LSA") means an account that employers deposit a set amount of money into every month, which employees can then spend on expenses that have been approved by the employer. An LSA is considered a taxable Fringe Benefit under the Code. An LSA is not considered Welfare Benefit Plan for the purposes of the Employee Retirement Income Security Act of 1974 ("ERISA"), the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), or the Health Insurance Portability and Accountability Act ("HIPAA").

**The Employer Acknowledges**

- The Sedera Medical Cost Sharing Community is not insurance. The IRS does not consider Membership dues paid to a health care sharing ministry as a tax-deductible medical expense.
- Any portion of the Sedera Monthly Membership Contribution paid by the Employer is considered a taxable Fringe Benefit, treated as W-2 wages, and subject to Federal income tax withholding, social security, Medicare taxes, and state and local taxes on wages as applicable.
- Any portion of the Sedera Membership paid by the Employee must be paid with post-tax dollars.
- This Fringe Benefit is funded solely by the general assets of the Employer.
- Fringe Benefit plans are not subject to ERISA, HIPAA, COBRA or any other legislation purporting to regulate group health plans or insurance.

## Schedule A

Check the box the Plan that applies (one or both)

**HDHP MEC** ☐

**Minimum Essential Coverage (Prescriptions, Well Care, & Preventative)**

**MeMD on all tiers**

**Citizens Rx Pharmacy Plan**

**HealthCare Blue Book Price Transparency**

Tier		
EE Status	Contribution/Premium Schedule	
EE Only		\$98.40
EE + Spouse		\$127.80
EE + Child(ren)		\$127.80
EE + Family		\$137.80

**Columbia Plan** ☐

**Columbia Health Plan**

**Minimum Essential Coverage (Prescriptions, Well Care, & Preventative)**

**MeMD on all tiers**

**Citizens Rx Pharmacy Plan**

**HealthCare Blue Book Price Transparency**

Tier		
EE Status	Contribution/Premium Schedule	
EE Only		\$143.00
EE + Spouse		\$216.40
EE + Child(ren)		\$233.50
EE + Family		\$313.75

COBRA Services annually (Automatically selected for employers over 20) This will add \$2.00/Per Employee to the rates above.



## Member Contribution Agreement

### How recurring payments work—

You authorize scheduled charges, as outlined in your Administrative Service Agreement, to your checking or savings account. You will be charged the amount indicated in our invoice. An invoice for each payment will be emailed to you and the charge will appear on your bank statement as an "ACH Debit." You agree that after email notification you will properly fund the account below for the amount of the invoice.

### Please complete the following information—

\_\_\_\_\_ (NAME OF OFFICER) authorizes **DWS Holdings, LLC dba LyfeSystems** to charge the  
\_\_\_\_\_ (FULL COMPANY NAME) bank account indicated below for all amounts  
invoiced as per the vendor contract.

PHONE: \_\_\_\_\_ EMAIL: \_\_\_\_\_

BILLING ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

### Banking Info—

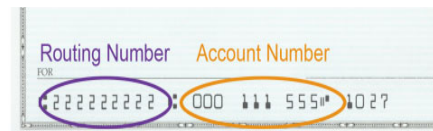
ACCOUNT TYPE: ☐ CHECKING ☐ SAVINGS

NAME ON ACCOUNT: \_\_\_\_\_

BANK NAME: \_\_\_\_\_

ROUTING NUMBER: \_\_\_\_\_ ACCOUNT NUMBER: \_\_\_\_\_

BANK CITY: \_\_\_\_\_ BANK STATE: \_\_\_\_\_



### ACH recurring payment authorization—

I understand that this authorization will remain in effect until I cancel it in writing, and I agree to notify DWS Holdings, LLC in writing of any changes in my account information or termination of this authorization at least 15 days prior to the account change. If the above noted periodic payment dates fall on a weekend or holiday, I understand that the payment may be executed on the next business day. I understand that because this is an electronic transaction, these funds may be withdrawn from my account as soon as the above noted periodic transaction dates. In the case of an ACH Transaction being rejected for Non Sufficient Funds (NSF) I understand that DWS Holdings , LLC may at its discretion attempt to process the charge again within 30 days, and agree to an additional \$25.00 charge for each attempt returned NSF which will be initiated as a separate transaction from the authorized recurring payment. I acknowledge that the origination of ACH transactions to my account must comply with the provisions of U.S. law. I agree not to dispute this recurring billing with my bank so long as the transactions correspond to the terms indicated in this authorization form.

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_