

BUSINESS ASSOCIATE AGREEMENT

Effective as of November 20 , 2013 (“**Effective Date**”), this Business Associate Agreement (“**Agreement**”) is made and entered into by and between **Michael Maguire of Vision Brokerage**. (“**Business Associate**”) and **Mphasis Corp** (“**Plan Sponsor**”), in its own capacity and as the plan sponsor of Covered Entity (defined below). The Business Associate and Plan Sponsor may be individually referred to herein as “**Party**” and collectively as “**Parties**”.

WHEREAS, Plan Sponsor is the plan sponsor of Covered Entity and has the authority to act on behalf of Covered Entity; and

WHEREAS, Business Associate has been retained by the Plan Sponsor, pursuant to the terms of a separate agreement, to perform certain services on behalf of Covered Entity;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the adequacy of which is hereby acknowledged, and intending to be legally bound hereby, Plan Sponsor and Business Associate hereby agree as follows:

Article I

Definitions

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.

1.01 *Breach*. “Breach” means the acquisition, access, use or disclosure of Protected Health Information in a manner not permitted under subpart E of 45 CFR part 164 which compromises the security or privacy of the Protected Health Information.

1.02 *Business Associate*. "Business Associate" means Madison Benefits Group, Inc., including any successor thereto. Business Associate shall perform its duties, obligations, and responsibilities under this Agreement in its capacity as a “business associate”, as defined as 45 CFR 160.103 of the Privacy Rule and Section 13408 of the Health Information Technology for Economic and Clinical Health Act (the “**HITECH Act**”), of the Covered Entity.

1.03 *Covered Entity*. "Covered Entity" means **Mphasis Corp Health and Benefits Plan**

1.04 *Designated Record Set*. “Designated Record Set” means a group of records maintained by or for the Covered Entity that include (a) medical records and billing records about individuals maintained by or for a covered healthcare provider; (b) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for the Covered Entity; or (c) records used, in whole or in part, by or for Covered Entity to make decisions about individuals. As used herein the term “Record” means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used or disseminated by or for Covered Entity.

1.05 *HIPAA*. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, as it may be amended from time to time.

1.06 *Individual*. "Individual" has the same meaning as the term “individual” in 45 CFR 164.501 of the Privacy Rule, and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g) of the Privacy Rule.

1.07 *Privacy Rule.* "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E, as promulgated under HIPAA. References herein to any section of the Privacy Rule shall include any amendments or successor provision thereto.

1.08 *Protected Health Information.* "Protected Health Information" has the same meaning as the term "protected health information" in 45 CFR 164.501 of the Privacy Rule; provided, however, such term is limited when used herein to the Protected Health Information created or received by the Business Associate from or on behalf of the Covered Entity.

1.09 *Required By Law.* "Required By Law" has the same meaning as the term "required by law" in 45 CFR 164.501 of the Privacy Rule.

1.10 *Secretary.* "Secretary" means the Secretary of the federal Department of Health and Human Services or his designee.

1.11 *Unsecured Protected Health Information.* "Unsecured Protected Health Information" means Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in authoritative guidance issued under Section 13402(h)(2) of the HITECH Act.

Article II

Obligations and Activities of Business Associate

2.01 Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law.

2.02 Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of Protected Health Information other than as permitted or required by this Agreement or as Required By Law.

2.03 Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of this Agreement.

2.04 Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.

2.05 Business Associate agrees to ensure that any agent (including a subcontractor) to whom it provides Protected Health Information agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such Protected Health Information.

2.06 Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner as determined by Business Associate or as Required By Law, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524 of the Privacy Rule.

2.07 Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 of the Privacy Rule at the request of a Covered Entity or an Individual, and in the time and manner as determined by Business Associate or as Required By Law.

2.08 Business Associate agrees to make its internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information available to the Covered Entity, or to the Secretary, in a time and manner as determined by Business Associate or as designated by the Secretary, for purposes of the Secretary to determine Covered Entity's compliance with the Privacy Rule.

2.09 Business Associate agrees to document such disclosures of Protected Health Information 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 Protected Health Information in accordance with 45 CFR 164.528 of the Privacy Rule.

2.10 Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner as determined by Business Associate or as Required By Law, information collected in accordance with Section 3.01 of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528 of the Privacy Rule.

2.11 Business Associate shall only disclose Protected Health Information to the following persons or positions who act on behalf of Covered Entity:

Benefits Manager and _____

Information may only be disclosed to the above contact(s) until such time as Business Associate receives written notification from or on behalf of Covered Entity that such contact(s) have changed. Business Associate will change the contact person(s) within two business days of its receipt of a proper notice from or on behalf of Covered Entity.

2.12 Effective 11/20/13 Business Associate agrees to, as soon as practicable, but in no case later than 60 calendar days after the discovery of a Breach of Unsecured Protected Health Information, notify Covered Entity of such Breach. A Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or agent of Business Associate. The notification shall include, to the extent possible, the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach. In addition, Business Associate shall provide Covered Entity with any other available information that Covered Entity is required to include in the notification to the individual under 45 CFR 164.404(c) of the Privacy Rule. Such notice shall be provided in substantially the same form as set forth in Appendix A hereto.

2.13 Effective February 17, 2010, to protect electronic Protected Health Information, Business Associate agrees to implement administrative safeguards in accordance with 45 CFR 164.308, physical safeguards in accordance with 45 CFR 164.310, technical safeguards in accordance with 45 CFR 164.312, and policies and procedures in accordance with 45 CFR 164.316.

Article III

Permitted Uses and Disclosures by Business Associate

3.01 Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity, provided that such use or disclosure (a) would not violate the Privacy Rule if done by Covered

Entity or (b) does not violate the “minimum necessary” policies and procedures of Covered Entity for compliance with HIPAA.

3.02 *Specific Use and Disclosures:*

(a) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate, to carry out its legal responsibilities or as Required By Law.

(b) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for either (i) the proper management and administration of Business Associate or (ii) to carry out the legal responsibilities of Business Associate; provided that either such disclosure is Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used (or further disclosed) only as Required By Law or for the purpose for which it was disclosed to such person, and such person notifies Business Associate of any instances of which it is aware in which the confidentiality of the Protected Health Information has been breached.

(c) Except as may otherwise be limited in this Agreement, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B) of the Privacy Rule.

(d) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1) of the Privacy Rule.

3.03 *Record Retention, Return, Destruction.* Business Associate shall retain records related to the Protected Health Information hereunder for a period of six (6) years unless the Agreement is terminated prior thereto. In the event of termination of this Agreement, the provisions of Section 5.01 of this Agreement shall govern the record retention, return or destruction.

Article IV

Obligations of Covered Entity

4.01 *Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions.*

(a) Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices, in accordance with 45 CFR 164.520 of the Privacy Rule, to the extent that such limitation(s) may affect Business Associate's use or disclosure of Protected Health Information.

(b) Covered Entity shall notify Business Associate of any change in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such change or revocation may affect Business Associate's use or disclosure of Protected Health Information.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522 of the Privacy Rule, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

4.02 *Permissible Requests by Covered Entity.* Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

4.03 Covered Entity shall only disclose Protected Health Information to the following persons at Business Associate:

Account Executive

Account Manager

Benefits Analyst

Managing Director

Information may only be disclosed to the above listed contact(s) until such time as Covered Entity receives written notification from Business Associate that such contact(s) have changed. Covered Entity shall change the contact person(s) within two business days of its receipt of a proper notice from Business Associate.

Article V

Term and Termination

5.01 *Term.* The term of this Agreement shall be effective as of the Effective Date, and shall terminate when all subject Protected Health Information is either destroyed or returned to Covered Entity; or, if it is infeasible to return or destroy Protected Health Information as Required By Law, the confidentiality protection that is Required By Law shall be extended to such Protected Health Information in accordance with the termination provisions in this Article V. In addition, either Party to this Agreement may terminate the Agreement by providing advance written notice of termination to the other Party hereto at least sixty (60) days prior to the next annual anniversary of the Effective Date, which termination shall be effective as of such annual anniversary date. The provisions of Section 5.03 shall survive any such termination.

5.02 *Termination for Cause.*

(a) Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

(i) 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;

(ii) Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not reasonably possible; or

(iii) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(b) Effective February 17, 2010, upon Business Associate's knowledge of a material breach by Covered Entity, Business Associate shall either:

(i) Provide an opportunity for Covered Entity to cure the breach or end the violation, and terminate this Agreement if Covered Entity does not cure the breach or end the violation within the time specified by Business Associate;

(ii) Immediately terminate this Agreement if Covered Entity has breached a material term of this Agreement and cure is not reasonably possible; or

(iii) If neither termination nor cure is feasible, Business Associate shall report the violation to the Secretary.

5.03 *Effect of Termination.*

(a) Except as provided in paragraph (b) of this Section 5.03, upon termination of this Agreement for any reason, Business Associate shall return or destroy all Protected Health Information as Required By Law. This provision shall also apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate, and its subcontractors and agents, shall retain no copies, including, without limitation, any electronic versions, of the Protected Health Information.

(b) In the event that Business Associate determines, in its discretion, that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide notification to Covered Entity that return or destruction is infeasible. Upon receipt of such notice, Business Associate shall (i) extend the confidentiality protections Required By Law to such Protected Health Information and (ii) limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information or as Required By Law.

Article VI

Miscellaneous

6.01 *Enforcement.* Effective February 17, 2010, if Business Associate violates any provision of this Agreement, the penalties under Sections 1176 and 1177 of the Social Security Act, as amended by the HITECH Act, shall apply to Business Associate.

6.02 *Amendment.* Business Associate and Plan Sponsor agree to take such action as they deem to be necessary to amend this Agreement from time to time, including as necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA. All such amendments shall be in writing and signed by the Parties hereto.

6.03 *Survival.* The respective rights and obligations of the Parties hereto under Article V and Section 6.04 of this Agreement, and as otherwise necessary to protect the rights of the Parties, shall survive the termination of this Agreement.

6.04 *Notices.* All notices, requests, consents and other communications hereunder must be in writing, addressed to the receiving Party's address set forth below or to such other address as a Party may designate by notice hereunder, and will be either (i) delivered by hand, (ii) made by facsimile transmission, (iii) sent by overnight courier, or (iv) sent by registered or certified mail, return receipt requested, postage prepaid.

If to the Plan Sponsor: 460 Park Ave South Suite 1101
New York, NY 10016

Facsimile: (212)683-1690

If to Business Associate: Vision Brokerage
1419 Todd Rd.
Toms River, NJ 08755

Facsimile: (732)974-8398

6.05 *Indemnification.* Plan Sponsor shall indemnify and hold harmless Business Associate from and against any damages, losses, and liabilities arising out of any act or omission by Plan Sponsor, or by or on behalf of Covered Entity, which constitutes a negligent or intentional violation of the Privacy Rule by Plan Sponsor or Covered Entity.

6.06 *Governing Law.* This Agreement shall be governed by the laws of the State of Texas (without regard to conflict of laws principles), except to the extent such laws are preempted by applicable federal law. Any claim, dispute, controversy or other matter arising under or related to this Agreement shall be subject to the sole and exclusive jurisdiction of the federal and state courts located in Harris County, Texas, and all Parties hereto waive any claims of inconvenience or lack of personal jurisdiction with respect to such courts.

6.07 *Waiver.* No waiver of any right hereunder shall be effective for any purpose unless in a writing that is signed by the Party possessing said right; nor shall any such waiver be construed to be a waiver of any subsequent right, term or provision of this Agreement. Each such waiver or consent will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver or consent.

6.08 *Assignment.* No Party to this Agreement may assign its rights or delegate its duties or liabilities under this Agreement without the prior written consent of the other Party.

6.09 *Entire Agreement.* This Agreement embodies the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof, and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in this Agreement shall affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement.

6.10 *Interpretation.* The Parties intend this Agreement to be enforced as written. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule and HIPAA. However, (i) if any provision of this Agreement should to any extent be declared illegal or unenforceable by a duly authorized court having jurisdiction, then the remainder of this Agreement, or the application of such provision in circumstances other than those as to which it is declared illegal or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the full extent permitted by law; and (ii) if any provision hereof is held to be unenforceable because of the duration of such provision, the Parties hereby agree that the court making such determination shall have the power to reduce the duration of such provision, and/or to delete specific words and phrases, and in its reduced form such provision shall then be enforceable to the full extent permitted by law. The Parties hereto acknowledge and agree that both (i) any rule of construction to the effect that any ambiguities are resolved against the drafting Party and (ii) the terms and provisions of this Agreement, shall be construed fairly as to all Parties hereto and not in favor of or against a Party, regardless of which Party was generally responsible for the preparation of this Agreement.

6.11 *Headings.* The headings and captions of the various sections of this Agreement are for convenience of reference only and shall in no way modify, or affect the meaning or construction of any of the terms or provisions hereof.

6.12 *Counterparts.* This Agreement may be executed in multiple counterparts, which together shall constitute one and the same agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, have executed this Agreement on this 20th day of January, 2010, to be effective as of the Effective Date.

PLAN SPONSOR (on its behalf and on behalf of the Covered Entity)

BUSINESS ASSOCIATE:

Vision Brokerage

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

APPENDIX A

MODEL NOTICE OF BREACH

This notification is being made pursuant to Section 2.12 of the Business Associate Agreement between Mphasis Corporation as plan sponsor for **Mphasis Corporation Health and Benefit Plan** (the “**Covered Entity**”) and Vision Brokerage (“**Business Associate**”). Business Associate hereby notifies Covered Entity that there has been a Breach of Unsecured Protected Health Information that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Name of Individuals Affected: _____

Description of the Breach: _____

Date of the Breach: _____

Date of the Discovery of the Breach: _____

Types of Unsecured Protected Health Information that were involved in the Breach [**INSERT** full name, Social Security number, date of birth, home address, account number, diagnosis, or disability code]: _____

Description of what the Business Associate is doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches: _____

Steps the individuals should take to protect themselves from potential harm resulting from the Breach: _____

If you have questions or want additional information about the foregoing, please contact:

Address: _____
Phone Number: _____
E-mail Address: _____
Website: _____