



Date: November 3, 2020

TO: Stanwood-Camano School District Board of Directors

FROM: Maurene Stanton, Executive Director of Human Resources

SUBJECT: 2021 Contract with The Partners Group

TYPE: ACTION REQUIRED

The district has utilized the services of The Partners Group (TPG) in the past for assistance with employee health care and benefit services. The district contracted with TPG last year to assist in the transition to the School Employees Benefits Board (SEBB). The attached contract with TPG is for continued consulting, support and compliance services related to the implementation of SEBB. This agreement will also allow TPG to assist the district with benefits not associated with SEBB such as long Term Disability.

Appendix A outlines the services and fees associated with this agreement. Appendix B outlines the Business Associate Agreement. This agreement will become effective on January 1, 2021.

If you have any questions, please contact me at your convenience.

Recommendation: I recommend the board's approval of the attached contract with The Partners Group, LTD.

**EMPLOYEE BENEFIT PLAN
CONSULTING SERVICES AGREEMENT**

This Employee Benefit Plan Consulting Services Agreement (“Agreement”) entered into on 1st day of January, 2021, is by and between The Stanwood-Camano School District, (“District”) located at: 26920 Pioneer Highway, Stanwood, WA and The Partners Group, LTD., an Oregon corporation and its member companies (“TPG” and together with District a “Party” or the “Parties”) located at 11740 SW 68th Parkway, Suite 200, Portland, OR 97223.

Recitals

- A. Whereas TPG desires to provide to District employee benefits consulting services, administrative support services, and general compliance services and support as provided below.
- B. Whereas District desires that TPG provide it employee benefits consulting services, administrative support services, and general compliance services and support as provided below.

Agreement

The Parties agree as follows:

1. **Services** – TPG shall provide consulting services relating to District’s benefit plans for its employees, prior employees, officers, directors or independent contractors as reasonably and specifically requested by District (“Benefit Plan Consulting Services”). The services to be provided are detailed in Attachment A of this Agreement.
2. **Special projects and additional services** – From time-to-time, District may request or TPG may provide projects or services in addition to services listed in Attachment A (“Additional Services”). When this occurs, TPG shall notify District that the requested services are outside the scope of this Agreement and shall provide District with detailed cost summary for the additional services required. The Additional Services shall not be provided unless both series and detailed costs are agreed to by both TPG and District. Once agreed to by the Parties, the Additional Services described therein, shall be part of, subject to and governed by the terms of this Agreement. From time to time in this Agreement the Benefit Plan Consulting Services and Additional Services are referred as “Services.”
3. **Compensation, Commissions** – Parties acknowledge TPG will likely be unable to receive compensation from insurance carriers directly contracted with the School Employees Benefits

Board (“SEBB”) but TPG MAY receive compensation from other service providers in the form of scheduled broker commissions, including bonus and/or “contingency” commissions, or other forms of compensation. Any and all such direct, bonus, and or contingency commissions attributable to District will be disclosed to District by TPG.

TPG will provide this disclosure at a minimum, annually and as frequently as quarterly if District requests it.

4. Compensation, Consulting Fees and Expense Reimbursement –The offsetting of broker fees with commissions is generally allowed under state insurance law if adequately documented and agreed to before the insurance transaction(s) is bound. Any such offsetting arrangement will be discussed in advance and agreed to by District and TPG.

To the extent that the Parties agree on items of compensation, a schedule of fees, and any such memorandum of Agreement or similar document, shall be incorporated in this Agreement with Attachment A.

5. Status of TPG – TPG shall at all times be an independent contractor providing services to District. TPG and its employees shall not be considered employees of District, nor shall TPG and its employees, agents, officers, directors or independent contractors be considered fiduciaries of any employee benefit plan sponsored or contributed to by District. TPG will not, and District will not request or require that TPG, perform any duty, function, or activity that would create ERISA or any other fiduciary duties on the part of the TPG.

The Parties agree that TPG has no discretionary authority over, and will not exercise any control over, any aspect of any employee benefit plan sponsored or contributed to by District, and further that TPG has no authority or discretionary responsibility in the administration of any such plans. TPG has no responsibility to, and TPG will not, render any investment advice.

6. Confidentiality of HIPAA Protected Health Information (PHI) – In the event that Protected Health Information (“PHI”) as defined by the Health Insurance Portability and Accountability Act of 1996 is disclosed to TPG to provide a service agreed to in this Agreement, TPG will be a Business Associate of District. However, TPG shall not be an agent of District other than for the purpose of placing coverage for employee health and welfare benefits on behalf of District.

To the extent that TPG serves as a Business Associate, the provisions of Attachment B will apply.

7. Termination – This Agreement shall continue in effect until terminated as provided herein. This Agreement may be terminated on 90 days’ advance written notice by one party to the other party, or such shorter period as the parties may agree in writing.

Notwithstanding the preceding sentence, District may terminate this Agreement on less than 90 days’ advance notice if TPG has materially breached any of its contained within this Agreement. The termination of this Agreement shall not limit either Parties’ right to enforce this Agreement according to its terms with respect to the period ending on the effective date of termination, nor

TPG's right to payment of compensation, expenses and/or or commissions for services and/or insurance transactions for the period ending on the effective date of termination.

8. Non-disparagement – Upon the termination of this Agreement and for a period of 24 months thereafter, District agrees not to, directly or indirectly, disparage or make any disparaging or negative remarks whether verbal, in writing, electronic transmission or otherwise, about TPG or any of its products, services, officers, directors, employees, or affiliates. Likewise; TPG agrees not to directly or indirectly, disparage or make any disparaging or negative remarks whether verbal, in writing, electronic transmission or otherwise, about District, its services, officers, directors or employees. Nothing in this paragraph shall preclude District or TPG from responding truthfully to inquiries made in connection with any legal or governmental proceeding pursuant to legal subpoena or other legal process.

9. Notices - Any notice or direction pursuant to this Agreement shall be in writing and shall be effective when actually delivered or, if mailed, when deposited postpaid as first-class mail. Mail shall be directed to the address stated in this Agreement or to such other address as a party may specify by notice to the other party.

10. Amendment - No amendment or changes to this Agreement shall be binding unless made in writing and signed by authorized representatives of both parties.

11. Binding Effect - This Agreement shall be binding upon and inure to the benefit of the parties and their affiliates, including parent and subsidiary entities, sister entities and other related businesses, whether or not incorporated, except that TPG may not assign its rights or obligations pursuant to this Agreement, other than to a third party that acquires its assets or business operations, without District's written consent, which consent will not be unreasonably withheld or delayed. In addition, if either party merges with another entity, the Agreement will be binding on the surviving entity.

12. Property of District - TPG agrees that upon request by District, and in any event upon termination of this Agreement, TPG shall return to District all documents, notes or other material in TPG's possession that were created by District or which constitutes PHI.

TPG retains the right to maintain secure copies of such PHI as required by federal and state benefit plan document and records maintenance rules and regulations.

13. Binding Arbitration – In the event that any dispute, controversy or claim arises out of or relating to this Agreement or a breach of this Agreement, it shall be settled by binding arbitration in accordance with the rules of the of either J.A.M.S/Endispute or the National Arbitration Forum, and judgment upon the award rendered by the arbitrator(s) shall be entered in any court having jurisdiction thereof. For that purpose, the parties consent to the jurisdiction and venue of an appropriate court located in King County, State of Washington. In the event that litigation results from or arises out of this Agreement or its performance, the parties agree to reimburse the prevailing party's reasonable attorney's fees, reasonable costs, and all other reasonable expenses, whether or not taxable as costs, in addition to any other legal or equitable relief, including injunction, to which the prevailing party may be entitled.

14. Intellectual Property- TPG may, as part of its consulting services, invest its resources, experience and expertise to develop and implement intellectual property which is designed to achieve specific goals for or on behalf of District. An example of intellectual property might include, but is not limited to, a unique plan design. When this service has been provided, TPG shall notify District that the intellectual property is unique to TPG and is proprietary to TPG, and cannot be used by District or disclosed to any other agents, brokers, consultants, third party administrators, insurers or other similar entities following the termination of this Agreement.

District agrees that it will hold in strictest confidence the features, techniques and design of the intellectual property and that it will not use or duplicate the intellectual property for itself or disclose it to any other entity after District ceases to be a client of TPG.

Nothing in this Agreement shall be interpreted as granting or conferring any rights by license or otherwise for District in any intellectual property that TPG has designated as proprietary. These provisions regarding proprietary intellectual property shall survive the termination of this agreement.

15. Governing Law – This Agreement shall be governed by the law of the State of Washington, except as preempted by federal law.

16. Severability – If any provision or portion thereof, of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the remaining provisions of this Agreement shall remain valid and enforceable.

17. No Third Party Beneficiaries – Nothing in this Agreement is intended or shall be construed to give any person (including, but not limited to, employees of District) other than District any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein. Except as otherwise agreed in writing, all Services shall be solely for District's internal purposes and use, and this engagement does not create privity between TPG and any other person or party other than District. No third party is entitled to rely, in any manner or for any purpose, on the advice, opinions, reports or other Services of TPG. This Section 19 shall survive the termination of the Agreement.

18. Access To Books and Records – Upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized representatives, made within four years after the services under this Agreement are provided TPG will make available those books, contracts, documents and records necessary to verify the nature and extent of the costs of providing its services. If TPG carries out any of the duties of this Agreement through a subcontract with a value of \$10,000 or more over a twelve-month period with a related individual or organization, then TPG shall include a provision embodying the requirements of this section in that subcontract. This section is included pursuant to and governed by the requirements of Public Law 96-499 (Section 1861(v)(1)(I) of the Social Security Act) and the regulations promulgated thereunder. No attorney-client, accountant-client, or other privilege will be deemed to have been waived by either party by virtue of this Agreement.

19. Entire Agreement – This Agreement (including the documents and instruments referred to in this Agreement) constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.

20. Counterparts – This Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same original.

The Stanwood-Camano School District

THE PARTNERS GROUP, LTD.,
an Oregon corporation

By: _____

By: _____

Name: _____

Name: Mark Rose

Its: _____

Its: Managing Consultant, K-12 Benefits

Date: _____

Date: _____

ATTACHMENT A
SERVICES AND FEES

Services TPG will make available to District* **:

- Advise District on development and delivery of employee communications materials
- Advise District on strategies related to collective bargaining negotiations related to its benefits program(s)
- Assist District in resolving plan participant claim disputes (If allowed under SEBB program)
- Advise District on benefits eligibility and enrollment issues
- Assist District with its compliance obligations related to mandated benefits (e.g., COBRA, FMLA, Mental Health Parity Act, HIPAA, Newborns' and Mothers' Health Protection Act, Women's Health and Cancer Rights Act, PPACA, etc.)
- Provide District Washington State Legislative informational webinars (1 pre-legislative and 1-post legislative)
- Provide District a weekly benefits newsletter with bulletins on special topics of interest
- Host annual Social Security and Medicare webinars (minimum 1 each per year)
- Provide face to face or telephonic claims and eligibility support for employees (if allowed under SEBB program)
- Provide District assistance in organization and production of its annual benefit fair
- Design and implement District's voluntary benefits package
- Upon subsequent written agreement by the Parties, TPG may develop for the District an employee benefits booklet
- Additional Services: _____

*TPG does not provide tax or legal advice.

**Not all services will be utilized in any one year. Services provided will be determined by District's need.

The District shall pay TPG as follows:

The District's payment to TPG will be made in equal monthly payments of \$450. Payments will be due no later than the fifth day of the next month. TPG will invoice the District no later than the 10 day of each month, beginning on the month following the execution of this contract.

It is understood that the plan year for the District is January 1 through December 31 each year.

** Unless agreed upon by both TPG and District 90 days prior, fees will automatically increase by 3% January 1st of each year.

TPG may not change these fees without providing District 30 days advance written notice. TPG may discontinue service and terminate this agreement without prior advance notice to District if fees are not paid in a timely manner.

The Plan Sponsor and Business Associate may have entered into various arrangements and may in the future enter into additional arrangements (collectively, the “Services Agreement”) pursuant to which Business Associate provides various services to the Plan.

This Agreement modifies and supplements the terms and conditions of the Services Agreement, and the provisions set forth herein shall be deemed a part of the Services Agreement. This Agreement supersedes all HIPAA Business Associate Agreements previously entered into between the parties, and all provisions of the Services Agreement intending to serve in whole or in part as a HIPAA Business Associate Agreement.

I. DEFINITIONS

A. Generally. Terms used, but not otherwise defined, shall have the same meaning as those terms in 45 CFR §§ 160.103 and 164.501. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Security and Privacy Regulations, as amended, the HIPAA Security and privacy Regulations shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Security and Privacy Regulations but are nonetheless permitted by the HIPAA Security and Privacy Regulations, the provisions of this Agreement shall control.

B. Covered Entity. “Covered Entity” means District.

C. Plan Sponsor. “Plan Sponsor” means District.

D. Group Health Plan. “Group Health Plan” (GHP) means the District Group Health Plan.

E. Administrative Services Agreement. “Administrative Services Agreement” means the written or verbal agreement between Covered Entity and Business Associate detailing the terms and conditions under which Business Associate will provide legal services to Covered Entity, Plan Sponsor, and Group Health Plan.

F. Individual. “Individual” shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

G. Protected Health Information (PHI). “PHI” shall mean individually identifiable health information including, without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. “PHI” includes, without limitation “Electronic Protected Health Information” as defined below.

H. Electronic Protected Health Information (ePHI). “ePHI” means PHI transmitted by Electronic Media (as defined in the HIPAA Security and Privacy Regulations) or maintained in Electronic Media.

I. PHI Covered. Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

J. Personal Information. "Personal information" means any information created for or received from Covered Entity under the Agreement from which the identity of an individual can reasonably be determined, and includes all information within the statutory meaning of "Protected Health Information" (45 CFR § 164.501)

K. Secretary. "Secretary" means the Secretary of the Department of Health and Human Services or his designee.

L. Privacy Rule. "Privacy Rule" means the standards for privacy set forth in 45 CFR Part 160 and Part 164, Subparts A and E.

M. Required By Law. "Required by Law" shall have the same meaning as the term "required by Law in 45 CFR § 164.501.

N. Summary Health Information. "Summary Health Information" means information, which may be PHI, that 1) summarizes claims history, claims expenses, or types of claims for whom the Covered Entity has provided health care benefits under the FHP; and 2) from which the identifiers specified in 45 CFR 514(b)(2)(i) have been deleted.

O. Privacy Officer. The "Privacy Officer" is the person within the Business Associate's company who is responsible for the development and implementation of privacy policies and procedures and who shall receive and respond to all privacy complaints.

P. Security Officer. The "Security Officer" is the person within the Business Associate's company who is responsible for the development and implementation of security policies and procedures and who shall receive and respond to all security complaints.

II. BUSINESS ASSOCIATE PRIVACY REQUIREMENTS

A. Minimum Necessary. Business Associate shall use and disclose PHI in compliance with the minimum necessary requirements of HIPAA's Privacy Regulations.

B. Acknowledgement of Substantial Harm. Business Associate acknowledges the use or disclosure of PHI in violation of this Agreement could cause substantial and irreparable harm to Covered Entity and its affiliates.

C. Use and Disclosure. Business Associate agrees to use or disclose any PHI solely:

1. To perform functions, activities, or services for, or on behalf of, GHP as specified in the Administrative Services Agreement or this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by GHP as a Covered Entity as defined in the Privacy Rule; or

2. As required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom GHP is required to disclose such information or as otherwise permitted under this Agreement or the HIPAA Regulations; and

3. To report violations of law to appropriate federal and state authorities, consistent with 45 CFR § 164.502(j)(1); or

4. With the express written permission by the GHP.

D. Disclosures to Covered Entity. GHP specifically authorizes Business Associate to make disclosures of PHI to Covered Entity made in compliance with HIPAA's Security and Privacy Rules.

E. Designated Business Associate. GHP and Covered Entity specifically authorize Business Associate to disclose PHI to those business associates of GHP or Covered Entity identified in Exhibit 2 ("Designated Business Associates"). GHP or Covered Entity may revise Exhibit 2 upon advance written notice to Business Associate. GHP and Covered Entity are solely responsible for ensuring that Designated Business Associates comply with the applicable requirements of the Privacy and Security Rules. Business Associate shall not be liable for any damages arising from Business Associate's proper disclosure of PHI to a Designated Business Associate.

F. Mitigate Harmful Effects. Business Associate shall mitigate, to the extent practical, any harmful effect that is actually or constructively known to Business Associate of a use or disclosure of PHI by business Associate or its agents or subcontractors in violation of the requirements of this Agreement.

G. Accountings. So GHP may meet its obligations under 45 CFR § 164.528, Business Associate shall document disclosures of PHI and information related to disclosures that would be required for GHP to respond to an inquiry by an Individual for an accounting of disclosures of PHI. Business Associate shall make available disclosure accountings for a period of six years prior to the date of request.

1. For repetitive disclosure of PHI for a single purpose to the same recipient, Business Associate may record the first disclosure along with the frequency and duration of subsequent disclosures.

2. This accounting requirement does not apply to disclosures: 1) permitted or required by the Agreement for purposes of GHP payment or health care operations; 2) to the Individual who is the subject of the PHI disclosed or to that Individual's personal representative; 3) to persons involved in that Individual's payment or treatment of health care; 4) for notification for disaster

relief purposes; 5) for national security or intelligence purposes; or 6) to law enforcement officials or correctional institutions regarding inmates.

H. Inspection of Books and Records for Business Associate's Compliance. Business Associate shall make internal practices, books, and records relating to the use and disclosure of PHI created or received by Business Associate on behalf of GHP available to the Covered Entity, or at the Covered Entity's request to the Secretary, in a reasonable time and manner, for purposes of determining the Business Associate's compliance with the Privacy Rule subject to attorney-client and other applicable legal privileges.

I. Inspection of Books and Records for Covered Entity's Compliance. Business Associate shall make internal practices, books, and records relating to the use and disclosure of PHI created or received by Business Associate on behalf of GHP available to the Covered Entity, or at the Covered Entity's request to the Secretary, in a reasonable time and manner, for purposes of determining the Covered Entity's compliance with the Privacy Rule subject to attorney-client and other applicable legal privileges.

J. Reporting Unauthorized Disclosures. Business Associate shall provide a written reporting to Covered Entity, within a commercially reasonable time frame, following actual or constructive knowledge and pertaining to the specific facts of the specific unauthorized use or disclosure of PHI by Business Associate or its agents or subcontractors, outlining the details of the unauthorized disclosure as it relates to the GHP.

K. Privacy Officer. Business Associate shall identify and maintain a singular person within the company who is designated to serve as the "Privacy Officer."

L. Workforce Training. Business Associate shall provide workforce training on an annual basis to ensure employees understand the Privacy and Security Rules as established by HIPAA and their obligations to confirm to this BAA.

M. Agents. Business Associate agrees to ensure that its agents, including subcontractors, to whom it provides PHI received from or created by Business Associate on behalf of Covered Entity, agrees in writing to the same restrictions and conditions that apply to Business Associate with respect to such information, and agrees to implement reasonable and appropriate safeguards to protect any of such information.

N. Court Orders. If either Party believes they are required by law or by a subpoena or court order to disclose any of the other Party's confidential or proprietary information, they shall promptly notify the other party prior to any disclosure and they shall promptly notify the other Party prior to any disclosure and they shall make all reasonable efforts to allow the other Party, or parties, an opportunity to seek a protective order or other judicial relief.

O. Notice. Business Associate shall report in writing to Covered Entity any use of disclosure of Covered Entity's Protected Health Information not otherwise permitted by this Agreement that is used or disclosed as a result of a breach by Business Associate, its subcontractors or agents within fourteen (14) business days after discovery of the use or disclosure. Notice shall

include the date of the breach, a description of the breach, date of discovery of the breach, the Protected Health Information that was used or disclosed as part of the breach, the parties who made and received the Protected Health Information, the corrective action and investigation taken to prevent further breaches, and the mitigation steps take regarding the breach.

P. Prohibition on Sale. Business Associate shall not engage in the sale of Protected Health Information disclosed to Business Associate as a part of this Agreement.

Q. Inspection and Copying. At the written request of Covered Entity, Business Associate agrees to provide access to PHI in a designated record set to Covered Entity in the time and manner required by law, in order to meet the requirements under 45 CFR § 164.524. If the PHI is held in an electronic health record, the Business Associate agrees to provide such information in an electronic format consistent with Section 13405(e) of the HITECH Act.

R. Minimum Necessary. When using, disclosing or requesting PHI to and from each other, other covered entities, or other business associates, the Parties shall limit PHI, to the extent practicable, to a limited data set as defined in 45 CFR § 164.514(e)(2) or, if needed, to the minimum necessary to accomplish the intended purpose of such use or disclosure. The Parties acknowledge that each may rely on the other's determination of the minimum necessary for compliance with the minimum necessary standards.

III. BUSINESS ASSOCIATE SECURITY REQUIREMENTS

A. Safeguards. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI that is creates, receives, maintains or transmits on behalf of Covered Entity.

B. ePHI. Business Associate shall ensure that any agent, including a subcontractor, to whom Business Associate provides ePHI, agrees to implement reasonable and appropriate safeguard to protect the ePHI.

C. Standards for Electronic Transactions. In connection with the services to be provided to Covered Entity and Plan Sponsor and its Group Health Plan as identified in this Agreement, Business Associate agrees that if it (or an agent or subcontractor) conducts an electronic transmission for which the Secretary of the Department of Health and Human Services has established a "standard transaction," Business Associate shall comply with the requirements of the Standards for Electronic Transactions (45 CFR parts 160 and 162). Business Associate shall attain compliance no later than the regulatory compliance date prescribed by the DHHS.

D. Standard Transactions. Business Associate will not enter into any trading partner agreement in connection with the conduct of Standard Transactions (as defined in 45 CFR § 160.103) for or on behalf of GHP that: 1) changes the definition, data condition, or use of a data element or segment in a Standard Transaction; 2) adds any data elements or segments to the maximum defined data set; 3) uses any code or data element that is not permitted in a Standard Transaction; or, 4) changes the meaning or intent of a Standard Transaction or its implementation specification.

E. Modifications. Business Associate understands and agrees that from time-to-time the DHHS may modify the standard transactions now identified in 45 § CFR 162.1101 – 1621802. Business Associate (and any subcontractor or agent) agrees to abide by any changes to such standard transactions that might be applicable to the services to be supplied in connection with this Agreement.

F. Reporting Security Breaches. Business Associate shall provide written notice to Covered Entity, within a commercially reasonable time frame, following actual or constructive knowledge and pertaining to the specific facts of the specific security breach of unsecured PHI by Business Associate or an agent or subcontractor, outlining the details of the security breach as it relates to the GHP.

G. Security Officer. Business Associate shall identify and maintain a singular person within the company who is designated to serve as the “Security Officer.”

IV. GROUP HEALTH PLAN PRIVACY REQUIREMENTS

A. Privacy Notice. GHP shall provide Business Associate with a copy of the notice of privacy practices that GHP produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.

B. Changing PHI. GHP shall provide Business Associate with any changes to, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associates permitted or required uses and disclosures.

C. Restrictions to PHI. GHP shall notify Business Associate of any restriction to the use or disclosure of PHI that GHP has agreed to in accordance with 45 § CFR 164.522 if such restrictions affect Business Associate’s uses or disclosures.

D. Permissible Requests. GHP shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule.

E. GHP. Covered Entity retains full and final authority and responsibility for GHP and its operation. Business Associate is empowered to act on behalf of FHP only as stated in the Administrative Services Agreement, this Agreement, or as mutually agreed to in a subsequent writing by Covered Entity and Business Associate.

F. Receipt of De-Identified Information. Business Associate may disclose de-identified information to Covered Entity without Covered Entity’s certification of compliance with the Privacy Rule. Covered Entity elects to receive only de-identified information from Business Associate on Exhibit 1.

G. Receipt of PHI. Covered Entity’s access to, or receipt of, PHI creates Covered Entity obligations under the Privacy Rule and Business Associate may only provide such information to Covered Entity upon receiving Covered Entity’s signed certification of compliance with the Privacy Rules as set forth in this document.

V. LIABILITY AND INDEMNIFICATION

A. Representation. Each Party represents and warrants to the other Party that it has the right to enter into this Agreement and that this Agreement is not in conflict with any other agreements or obligations of the Party.

B. Proprietary Information. Either Party may gain access to information considered proprietary by the other Party. Such proprietary information includes, but is not limited to, negotiated rates and provider financing arrangements, ideas or processes to perform administrative services, computer systems or programs, marketing or sales information, and training manuals. Parties agree to keep all proprietary information strictly confidential.

C. Indemnification by Business Associate. This provision shall survive termination of this agreement. Business Associate shall indemnify, hold harmless, and, at Covered Entity's request, defend Covered Entity, Plan Sponsor, Group Health Plan, and its Trustees, agents, or affiliates from and against any and all claims, actions, causes of action, losses, liabilities, damages, penalties, costs and expenses, including but not limited to, attorneys' fees, resulting from Business Associate's or its agent's or subcontractor's negligence, breach of this Agreement, or violation of the Privacy Rule or Security Rule provided that Covered Entity provides Business Associate with prompt, written notice of any such claim, sole control of the defense and settlement of such claim, and all reasonable assistance to defend such claim. Business Associate shall not agree to settle the claim without covered Entity's written consent, provided that such consent is not unreasonably withheld, conditioned or delayed. Business Associate shall have no obligations under this paragraph if such claims, damages and liabilities result from Covered Entity's breach of this Agreement or Covered Entity's failure to discharge obligations under this Agreement.

D. Indemnification by Covered Entity. This provision shall survive termination of this Agreement. To the extent allowed by the Employee Retirement Income Security Act, Covered Entity shall indemnify, hold harmless, and, at Business Associate's request, defend business Associate or any of its officers, directors, employees, agents, or affiliates from and against any and all claims, actions, causes of action, losses, liabilities, damages, penalties, costs and expenses, including, but not limited to, attorneys' fees, resulting from Covered Entity's negligence, breach of this Agreement, or violation of the Privacy Rule or Security Rule provided that Business Associate provides Covered Entity with prompt, written notice of any such claim, sole control of the defense and settlement of such claim, and all reasonable assistance to defend such claim. Covered Entity shall not agree to settle the claim without Business Associate's written consent, provided that such consent is not unreasonably withheld, conditioned or delayed. Covered Entity shall have no obligations under this paragraph if such claims, damages and liabilities result from the Business Associate's breach of this Agreement or Business Associate's failure to discharge obligations under this Agreement.

VI. TERM AND TERMINATION

A. Duration. The term of this Agreement shall be the same as the Administrative Services Agreement. Upon termination of the Administrative Services Agreement, the terms of this Agreement shall remain in effect until all of the PHI provided by GHP to Business Associate, or created or received by Business Associate on behalf of GHP is destroyed or returned to GHP, or, if Business Associate claims it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

B. Material Breach. If one party breaches any material provision of this Agreement, the non-breaching Party or Parties may begin the process of terminating this Agreement by giving written notice of termination to the breaching party. If the breach is capable of being cured and is reasonably cured within ten (10) calendar days after the receipt of the notice, the termination shall not become effective. If the breach is not capable of being cured or is not reasonably cured within ten (10) days after receipt of the notice, the non-breaching party may terminate this Agreement by delivering a second notice to the breaching party, specifying a termination date not later than thirty (30) days after the expiration of the cure period. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, Covered Entity gives written notice to Business Associate of such belief within a reasonable time after forming such belief and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to terminate this Agreement immediately.

C. Lack-of-Staff. Notwithstanding the aforementioned provisions, either Party may automatically terminate this Agreement if either Party fails to maintain a staff capable of efficiently and effectively performing the responsibilities as described in this Agreement.

D. Illegal Acts or Omissions. Notwithstanding the aforementioned provisions, either Party may automatically terminate this Agreement if either Party engages in acts or omissions constituting abandonment, fraud, insolvency, misappropriation of funds, material misrepresentation, or gross and willful misconduct.

E. Administrative Simplification. The Parties agree to negotiate in good faith to amend this Agreement, when and as necessary, to comply with final rules promulgated pursuant to the Administrative Simplification components of the HIPAA of 1996. If the Parties are unable to reach agreement on the terms of such an amendment within ten (10) business days after receipt by one Party of a proposed amendment for this purpose from the other Party, either party may terminate this Agreement.

F. Return or Destruction of PHI. Covered Entity agrees that at termination of this Agreement or upon Covered Entity's materially appropriate request, whichever occurs first, if feasible, Business Associate will return or destroy, as may be legally appropriate, all PHI received from or created or received by the Business Associate on the Covered Entity's behalf that the Business Associate still maintains in any form and retain no copies of such information or if such return or destruction is not feasible, Business Associate will extend the protections of this

Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible. If the Covered Entity determines that return or destruction of PHI is not feasible, the protections of this Agreement shall survive termination of the Agreement and Business Associate shall not further use or disclose such information except for those purposes which make return or destruction of the PHI infeasible.

VII. GENERAL PROVISIONS

A. Entire Agreement, Waiver, and Amendment. This Agreement constitutes the entire understanding between the parties, except for the terms outlined in the Administrative Services Agreement, and supersedes all prior proposals, communications and agreements between the parties relating to its subject matter. No amendment, change or waiver of any provision of this Agreement will be binding unless in writing and signed by an officer of Covered Entity and Business Associate. In the event one or more of the provisions of this Agreement are found to be invalid, illegal or unenforceable by a court with jurisdiction, the remaining provisions shall continue in full force and effect. Waiver of breach of any provision of this Agreement will not be deemed a waiver of any other breach of the same or a different provision.

B. Non-Assignability / Non-Delegation. Neither party may assign or transfer this Agreement or any of the rights or licenses granted under it, unless otherwise agreed upon and authorized in writing by an officer of the other party.

C. Independent Contractor. The Covered Entity and Business Associate's relationship to each other is that of an independent contractor. Neither Party shall be deemed to be or hold itself out as a partner, agent, employee or joint venture partner of the other Party.

D. Notices. Any notice required to be given by any Party to the other Party pursuant to this Agreement shall be in writing and will be sent by certified United States mail, postage prepaid, return receipt requested, or by electronic mail, or by facsimile transmission or overnight courier service, addressed to the party as set forth below.

E. Force Majeure. The obligations of the parties under this Agreement shall be suspended to the extent a party is hindered or prevented from complying therewith because of labor disturbances (including strikes or lockouts), acts of war, acts of terrorism, vandalism or other aggression, acts of God, fires, storms, accidents, governmental regulations, or any other cause whatsoever beyond either party's control. In addition, the parties' failure to perform under this Agreement shall be excused, and shall not be cause for termination, if such failure to perform is due to another party undertaking actions or activities or failing to undertake actions or activities such that the other party is or would be prohibited from the due observance or performance of any material covenant, condition or agreement contained in this Agreement.

F. Severability. Any provisions of this Agreement deemed illegal, void, unenforceable, or not in accordance with any applicable plan by a court of competent jurisdiction shall be immediately deemed void but shall not affect the other provisions of this Agreement unless doing so would defeat the business purpose of this Agreement. The parties agree to meet and negotiate

in good faith to replace any voidable or unenforceable provision that complies with all applicable laws, regulations and plan provisions.

G. Remedies. Either party shall be entitled to pursue any available equitable or legal remedies against the other for breach of this Agreement, including, but not limited to, specific performance or preliminary injunction enforcing this Agreement, and judgment for damages.

H. Non-Waiver. The failure or refusal of a party to enforce or enjoin any breach or violation of any provision of this Agreement will not be a waiver of, consent to or excuse for any other, different or subsequent breach or violation.

I. Third-Party Rights. Except as expressly stated herein or in the HIPAA Security and Privacy Regulations, the parties to this Agreement do not intend to create any rights in any third parties.

J. Exhibits. All exhibits attached to this agreement are incorporated by this reference. This Agreement shall control in the event of a conflict between this Agreement and any attached exhibits.

K. Survival. The respective rights and obligations of Business Associate under sections II and III shall survive termination of this Agreement.

L. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

M. Binding Effect. This Agreement shall be binding on, and shall inure to the benefit of, the parties and their directors, officers, employees, and respective successors, personal representatives, heirs and permitted assigns. In addition, Business Associate shall cause its agents and/or subcontractors to be bound by the provisions of this Agreement.

N. Currency. All amounts due to either party hereunder shall be payable in lawful currency of the United States of America.

[The Remainder of this Page is Intentionally Blank]

O. Choice of Law and Venue. This Agreement will be interpreted and enforced according to the laws of the state of Oregon, without regard to its conflict of law principles. Any proceeding that is brought to enforce any provision of the Agreement, or to seek damages or injunctive relief for its breach, will be filed and heard in Washington County.

THE STANWOOD-CAMANO SCHOOL DISTRICT THE PARTNERS GROUP, LTD.

By: _____

By: _____

Name: _____

Name: Mark Rose _____

Title: _____

Title: Managing Consultant, K-12 Benefits

Date: _____

Date: _____