

EXHIBIT D

THIS BUSINESS ASSOCIATE AGREEMENT (the “Business Associate Agreement”) is incorporated into the Agreement for Administrative Services dated **January 1**, 2006, by and between **City of Jonesboro** (the “Employer”), the group health plan or portion thereof listed on Schedule 1 hereto and subject to the Privacy Rule (as defined below) (the “Covered Entity”) and Benergy Outsourcing Strategies, Inc. (the “Business Associate”), on _____.

I. Background

Under the Standards for Privacy of Individually Identifiable Health Information, prescribed at 45 CFR part 160 and 164, subparts A and E (the “Privacy Rule”), in order for Covered Entity to disclose Protected Health Information (“PHI”) (as defined in 45 CFR § 164.501) to Business Associate to permit it to perform certain functions for or on behalf of Covered Entity, Covered Entity must obtain an agreement with Business Associate that it will adhere to certain guidelines designed to protect PHI. This Business Associate Agreement is intended to fulfill Covered Entity’s obligations with respect to Business Associate under the Privacy Rule and will be interpreted in a manner consistent with that intent. Initially capitalized words and phrases not otherwise defined in this Business Associate Agreement will have the same definition that is given to those words and phrases under the Privacy Rule or in the Administration Agreement to which this Business Associate Agreement is an exhibit (the “Administration Agreement”).

II. Obligations and Activities of Business Associate

a. Business Associate agrees not to use or to disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law.

b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Business Associate Agreement or as Required by Law.

c. Business Associates 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 in violation of the requirements of this Business Associate Agreement.

d. Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Business Associate Agreement of which it becomes aware within a reasonable period of time after discovery.

e. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI agrees to the same restrictions and conditions that apply through this Business Associate Agreement to Business Associate with respect to such information.

f. Business Associate agrees to provide access, at the request of Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to

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an Individual in order to meet the requirements under 45 CFR § 164.524.

g. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual.

h. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary of the U.S. Department of Health and Human Services or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

i. 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.

j. Business Associate agrees to provide to Covered Entity or an Individual, information collected in accordance with Subsection II.i. of this Business Associate Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

III. Permitted Uses and Disclosures by Business Associate

a. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Administration Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

b. Except as otherwise limited in this Business Associate Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

c. Except as otherwise limited in this Business Associate Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are 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 the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

d. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).

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e. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

IV. Obligations of Covered Entity

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

b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

c. Covered Entity shall notify Business Associate of any restriction 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.

V. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, provided however that the Business Associate may use or disclose PHI for data aggregation or management and administrative activities as provided in Sections III(b)-(d) of this Business Associate Agreement.

VI. Term and Termination

a. Term. The Term of this Business Associate Agreement shall be effective as of the first date appearing above, 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 not feasible 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 Business Associate Agreement and the Administration Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

2. Immediately terminate this Business Associate Agreement and the Administration Agreement if Business Associate has breached a material term of this Business Associate Agreement and cure is not possible; or

3. If neither termination nor cure as feasible, Covered Entity shall report the violation to the Secretary.

c. Effect of Termination.

1. Except as provided in paragraph (2) of this Section, upon termination of this Business Associate Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of 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 not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction not feasible. Upon the determination by Covered Entity that return or destruction of PHI is not feasible, Business Associate shall extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction not feasible, for so long as Business Associate maintains such PHI.

VII. Miscellaneous

a. Regulatory References. A reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.

b. Amendment. The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time to permit Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191. This Business Associate Agreement may be amended only in a writing signed by each party.

c. Survival. The respective rights and obligations of Business Associate under Section VI.c. of this Business Associate Agreement shall survive the termination of this Business Associate Agreement.

d. Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

e. Supersession. The provisions of this Business Associate Agreement are intended by the parties hereto to amend and, to the extent inconsistent with, to supersede the provisions of the Administration Agreement.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have signed this Agreement.

**BENERGY OUT SOURCING
STRATEGIES, INC.**

By: _____

Name: _____

Title: _____

Date: _____

**[INSERT NAME OF PLAN],
BY [INSERT NAME OF EMPLOYER],
AS PLAN ADMINISTRATOR**

By: _____

Name: _____

Title: _____

Date: _____