



THREE-WAY CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement is made as of **July 1, 2018** (“Effective Date”) by and among Lifetime Benefit Solutions, Inc. (“LBS”), with its principal place of business at 333 Butternut Drive, Syracuse, NY 13214, **Elmira Heights Central School District**, with its principal place of business at 2083 College Avenue, Elmira Heights, NY 14903 (“Group”), and **Perry & Carroll, Inc.**, with its principal place of business at 100 West Church Street, Elmira, NY 14902 (“Consultant”).

Now, therefore, for and in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the parties agree as follows:

1. Purpose

a. Group has contracted with Consultant to provide certain consulting and/or broker services related to **Elmira Heights Central School District**, all as more particularly described in the consulting/auditing/broker/independent contractor agreement executed by Group and Consultant (the “Agreement”).

b. Group and Consultant hereby represent and warrant to LBS that prior to LBS undertaking any obligations under this Confidentiality Agreement, Group and Consultant shall execute and comply with the terms of a separate written HIPAA business associate agreement, obligating the parties to comply with privacy and security safeguard obligations with respect to protected health information. Group and Consultant agree to amend such separate agreement as necessary or advisable from time to time to comply with and reflect current or future legislation, regulations or rule relating to HIPAA. Group and LBS are parties to a HIPAA business associate agreement.

c. To enable Consultant to perform its obligations under the Agreement, Group has requested, and hereby authorizes, LBS to provide to Consultant certain information, which may include Confidential Information and protected health information, pertaining to Group, the confidentiality of which must be maintained, and which must be protected from further disclosure and unauthorized use.

2. “Confidential Information” Defined; No Warranties

a. For purposes of this Confidentiality Agreement, the term “Confidential Information” means all confidential and proprietary information of a party, including, but not limited to, all: information concerning patents, patent applications, trade secrets, ideas, models, samples, techniques, sketches, designs, drawings, works of authorship, art work, improvements, inventions, equipment, processes, apparatuses, algorithms,

software programs, software systems, software source documents, data communications and other technology; information concerning research, experimental work, development, engineering, design details, specifications, purchasing, or manufacturing of current, future, or proposed products and services; and information concerning finances, investors, employees, customers, know-how related to networking, business and contractual relationships, business forecasts, procurement requirements, sales, merchandising, business strategies and plans, marketing plans and pricing; and other trade secrets or confidential information of a party's clients, vendors, suppliers, or distributors, concerning their respective businesses. Confidential Information shall also include any notes, analyses, reports, copies, compilations or other material or documents prepared by a party, or other person on a party's behalf, which is based in whole or in part on Confidential Information. "Confidential Information" does not include information that becomes available to Consultant on a non-confidential basis from a source other than LBS or Group, provided that such information is not known by Consultant to be proprietary or such source is not known by Consultant to be bound by a confidentiality agreement or other obligation of secrecy to LBS, Group or another party. Group's and Consultant's use and disclosure of protected health information shall be exclusively governed by the business associate agreement.

b. Neither Group nor LBS makes any representation or warranty as to the accuracy or completeness of information provided to Consultant pursuant to this Confidentiality Agreement.

3. Limitations on Use and Disclosure

Consultant will not, in any manner or for any reason whatsoever, directly or indirectly:

- a. use all or any portion of the Confidential Information for any purpose other than solely for the performance of its obligations under the Agreement;
- b. except as set forth in this Confidentiality Agreement, disclose or otherwise make available in any manner or form to any person or entity (including, without limitation, Group) all or any portion of the Confidential Information; or
- c. take any action or fail to take or abstain from taking any action the effect of which would cause Confidential Information to be disclosed or otherwise made available in a manner inconsistent with Consultant's obligations under this Confidentiality Agreement.

4. Permissible Use and Disclosure

- a. Consultant may report to Group pursuant to the terms of the Agreement.
- b. Consultant may disclose Confidential Information to its employees only on a need-to-know basis, provided that Consultant:

- i. directs its employees to use the Confidential Information solely for the purpose of fulfilling its obligations under the Agreement;
 - ii. informs its employees of the confidential nature of the Confidential Information; and
 - iii. directs and causes its employees to treat Confidential Information confidentially, as required of Consultant under this Confidentiality Agreement.
- c. Consultant may utilize subcontractors in performing its services under the Agreement. Consultant may disclose Confidential Information to its subcontractors only on a need-to-know basis, provided that Consultant:
- i. directs its subcontractors to use the Confidential Information solely for the purpose of fulfilling Consultant's obligations under the Agreement;
 - ii. informs its subcontractors of the confidential nature of the Confidential Information; and
 - iii. directs and causes its subcontractors to treat the Confidential Information confidentially, as required of Consultant under this Confidentiality Agreement.
- d. Consultant will provide LBS with prompt written notice, upon LBS' request, of all employees and subcontractors to whom Confidential Information was disclosed.

5. Notice of Improper Use or Disclosure

Except as may be required under HIPAA, Consultant will notify LBS within the longer of 24 hours or one (1) business day, upon learning of any use or disclosure of Confidential Information in contravention of this Confidentiality Agreement. The notice will include to whom and for what purpose the Confidential Information was used or disclosed, the specific Confidential Information used or disclosed, and the circumstances surrounding the use or disclosure.

6. Safeguards

Consultant will implement appropriate safeguards to ensure that Confidential Information is not used or disclosed in a manner inconsistent with this Confidentiality Agreement. Such safeguards shall include, at a minimum, written standards and procedures that meet industry standards and comply with all applicable laws and regulations pertaining to the storage, access and transmission of Confidential Information to/by persons otherwise authorized to have access to it under the terms of this Confidentiality Agreement. Upon reasonable notice, LBS will have the right, at any

time and from time to time, to audit Consultant's books and records and to conduct on-site inspections of Consultant's operations, as necessary for LBS to ensure Consultant's compliance with the foregoing. Consultant will fully cooperate with LBS in the conduct of such audits and inspections at no charge.

7. Requested/Required Disclosures

Unless disclosure is permitted under this Confidentiality Agreement, if Consultant is required (by deposition, interrogatory, request for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, Consultant will provide LBS with notice thereof (by telephone, fax or any other reasonable form of communication) within the longer of 24 hours or one (1) business day of the request or demand, and before responding, so that LBS may seek an appropriate protective order or other appropriate remedy. Consultant will furnish only that minimally necessary portion of the Confidential Information that LBS specifically authorizes Consultant to disclose, or that Consultant is legally required to disclose.

8. Return of Confidential Information

Upon LBS' request, or in the event that the Agreement or this Confidentiality Agreement is terminated, Consultant will promptly return to LBS all written material containing or reflecting any Confidential Information. The return of such material will not relieve Consultant of its obligations under this Confidentiality Agreement. In any event, Consultant will not retain any copies, extracts or other reproductions in whole or in part of such written material or any other Confidential Information. All documents, memoranda, notes and other writings whatsoever prepared by Consultant or its agents based on information reflected in the Confidential Information will be destroyed, and the destruction will be certified in writing to LBS by an authorized officer supervising the destruction. In the event that return or destruction of any material containing or reflecting any Confidential Information is infeasible, Consultant may not further use or disclose the Confidential Information and will certify in writing to LBS that it will not use or disclose Confidential Information.

9. Remedies for Breach

a. In the event of any breach or threatened breach of this Confidentiality Agreement, LBS will be entitled to all legal and equitable remedies, including specific performance, without requirement of proof of actual damages or threat of actual damages. Consultant and Group each agree to indemnify, hold harmless, and defend with competent counsel, LBS, from and against any claim, action, proceeding, loss, damages, costs, expenses (including, without limitation, reasonable attorneys' fees) or liabilities resulting from its use or disclosure of Confidential Information in connection with this Confidentiality Agreement.

b. In the event that LBS determines, in its sole discretion, that Consultant has violated a material term of this Confidentiality Agreement, LBS will be entitled to immediately cease providing Confidential Information to Consultant, and to invoke one or more of the remedies available under this Confidentiality Agreement or at law or in equity.

10. Survival

The rights and obligations of the parties set forth in this Confidentiality Agreement will survive the termination of the Agreement or this Confidentiality Agreement in any event.

11. No Third Party Beneficiaries

LBS, Group, and Consultant agree that there are no intended third party beneficiaries under, or other parties to, this Confidentiality Agreement.

12. Modification/Waiver

This Confidentiality Agreement may be modified or waived only by a separate writing executed by the parties that expressly modifies, or waives a specific provision of, this Confidentiality Agreement. Consultant will abide by any modifications made to this Confidentiality Agreement by LBS for the purpose of maintaining compliance with any statutory, regulatory or other legal requirement.

13. Governing Law; Jurisdiction; Venue

This Confidentiality Agreement will be governed by and construed in accordance with the laws of the State of New York. Any action brought under this Confidentiality Agreement will be brought in a court of competent jurisdiction venued in the County of Onondaga, State of New York.

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****Signature page to follow****



The parties' assent to the terms of this Confidentiality Agreement is confirmed by their authorized signatures below as of the Effective Date.

Lifetime Benefit Solutions, Inc.:

By: _____

Print Name: Thomas D. Cauthorn

Title: President

Elmira Heights Central School District:

By: _____

Print Name: _____

Title: _____

Perry & Carroll, Inc.:

By: _____

Print Name: _____

Title: _____