

SERVICE AGREEMENT

THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION

This Agreement is entered into to be effective as of date of the last signature below, by and between **Christian County Public Schools** with its offices located at **200 Glass Avenue, Hopkinsville Ky. 42240** (hereinafter referred to as "Vendor") and **Cumberland Hall Hospital** with its principal place of business located at **270 Walton Way, Hopkinsville, Ky. 42240** (hereinafter referred to as "Facility").

Vendor has agreed to render the services as more particularly described in **Exhibit A**, and Facility has agreed to compensate Vendor for Services rendered.

In the event of a conflict between Vendor's invoice and/or exhibits and the terms of this Agreement, the terms of this Agreement shall control.

NOW, THEREFORE, in consideration of mutual covenants, conditions and promises set forth herein, the parties hereto agree as follows:

1. **Scope of Services.** Vendor shall provide the services described in **Exhibit A** (the "Services") for the Facility on an as needed basis or upon the schedule identified in **Exhibit A**.
2. **Payments.** Facility agrees to pay Vendor according to the terms described in **Exhibit B**, subject to the submission of adequate documentation as specified by Facility, or upon a separate quote, contingent upon Facility's written approval of such quote. Payment shall be made within thirty (30) days of the receipt of invoice.
3. **Term and Termination.** This Agreement shall be effective for one (1) year (the "Term"), unless the Agreement is sooner terminated in accordance with the provisions herein. Notwithstanding the foregoing, either party may terminate this Agreement at any time without cause by providing thirty (30) days' advance written notice to the other party.
4. **Insurance.** Vendor shall comply with the requirements of the Insurance Addendum appended hereto as **Exhibit C**.
5. **Qualifications & Compliance with Facility Rules.**
 - a) Vendor warrants that all of its staff providing Services from time to time hereunder shall have all of the necessary qualifications, certifications and licenses pursuant to Federal, State, and local laws and regulations which are applicable to the provision of such Services. Vendor agrees to instruct their agents and employees that they must comply with all applicable policies, procedures, rules, regulations or guidelines which may be instituted from time to time by Facility, or any applicable regulatory, licensing, or accrediting entity. To that end, Vendor agrees that any agents or employees of Vendor will participate in any orientation or training deemed necessary by Facility.
 - b) As applicable to this Agreement, Vendor warrants that any products provided by Vendor under the Agreement will meet and or conform to all specifications as published by Vendor, and shall be in good and marketable condition and be free from all defects.

- c) As applicable to this Agreement Vendor warrants that the Services provided under the Agreement will be performed in a professional and workmanlike manner consistent with applicable industry standards.
- d) Vendor shall not use any subcontractors to perform any Services under this Agreement that have not previously been approved by Facility. Vendor shall require that all subcontractors maintain the same levels of insurance as required by Vendor in this Agreement, or be listed as "Additional Insured" of Vendor. Vendor shall downstream to subcontractors paragraphs 6, 8, 10-14, 16, 18 and 20. Vendor shall be responsible for all claims, liabilities and damages caused by subcontractor.

6. **Additional Terms Applicable to Groups and Separate Legal Entities.** If Vendor is a group or separate legal entity under applicable state law, then Vendor represents that each person performing the Services under this Agreement (1) has been educated and trained consistent with applicable regulatory requirements and Facility policy; (2) is appropriately licensed, certified or registered, as applicable, to provide the Services as contemplated herein; and (3) has appropriate knowledge, experience and competence as are appropriate for his or her assigned responsibilities as required by Facility. If Vendor's personnel will be on site at Facility's premises, then Vendor additionally represents that each person performing Services under this Agreement (1) has been oriented to Facility policies and procedures; (2) has verified the person's health status as required by his or her duties in providing the Services under the Agreement and as required by all applicable laws and regulations (collectively, "Law"); (3) has performed criminal background checks and/or pre-employment verification of convictions for abuse or neglect when required by Law; and (4) has evaluated and reviewed each person's references, when applicable. Vendor shall provide Facility with evidence of compliance with this paragraph upon request.

7. **Independent Contractors.** In the performance of their respective duties and obligations under this Agreement, it is mutually understood and agreed that the parties are at all times acting as independent Contractors, and that neither shall have nor exercise any control or direction over the methods by which the other shall perform their obligations under this Agreement. No agency or employment relationship, partnership, joint venture or other business organization is created hereby. It is expressly agreed by the parties hereto that neither shall have authority to bind the other, and that no work, act, or omission in the performance of their respective obligations under this Agreement shall be construed to make or render either, the servant, agent, employee or partner of the other.

It is expressly understood that staff providing Services under this Agreement are solely employed by Vendor and that Vendor retains the ultimate responsibility for all hiring and firing decisions as well as ensuring compliance with the Fair Labor Standards Act and any and all other applicable laws or regulations involving employee pay or benefits and as a result Vendor agrees to indemnify and hold harmless Facility, its officers, agents and employees from and against employment claims raised by Vendor consultants including but not limited to discrimination, wrongful discharge, ERISA or wage claims.

8. **Indemnification.** Vendor shall indemnify, protect, defend and hold harmless Facility, its management company, holding company, employees or agents ("Indemnitees") against any and all claims, actions, penalties, assessments, losses, suits, judgments, awards, and all reasonable expenses associated therewith, including, but not limited to, attorney's fees and costs (hereinafter "Claims") arising out of or otherwise dealing with any claims or allegations threatened, made or instituted by any third-party against Indemnitees to the extent said Claims are alleged to and/or were caused by (i) an act, omission and/or the negligence of Vendor, its personnel, subcontractors, or agents; (ii) a breach of the Agreement or any applicable Addenda; or (iii) a violation of any Law (hereinafter said Claims are

referred to as the "Indemnifiable Claims"). Vendor (upon notice from an Indemnitee) shall defend the Indemnifiable Claim at Vendor's expense by legal counsel reasonably satisfactory to Indemnitee and Indemnitee shall have the right (but not the obligation) to participate with Vendor in such defense. For the avoidance of doubt, Indemnitee need not have first paid any such Indemnifiable Claim before Vendor is obligated to provide indemnification hereunder.

Indemnitees agree to: (i) notify Vendor as soon as they become aware of any Indemnifiable Claim, (ii) cooperate with and authorize Vendor to carry out an investigation and defend any such Indemnifiable Claim (subject to the terms of this Paragraph 8), and (iii) not compromise or settle any Indemnifiable Claims without the prior written consent of Vendor, which consent shall not be unreasonably delayed or withheld.

This Paragraph 8 shall survive the termination of this Agreement for any reason.

9. **Fraud and Abuse.** Notwithstanding any unanticipated effect of any provision of this Agreement, neither party will knowingly or intentionally conduct himself/herself/itself in a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medicaid programs (42 USC § 1320a-7b).
10. **Sanctioned Provider Representations and Warranties.**
 - a) If applicable, Vendor represents that each person performing the services under this Agreement (1) has been educated and trained, consistent with applicable regulatory requirements and Facility policy; (2) is appropriately licensed, certified or registered, as applicable, to provide the services contemplated herein; and (3) has appropriate knowledge, experience and competence as are appropriate for his or her assigned responsibilities as required by Facility.

If Vendor's personnel will be on site at Facility's premises, then Vendor additionally represents that each person performing services under this agreement (1) has been oriented to Facility policies and procedures; (2) has verified the person's health status as required by his or her duties in providing the services under this Agreement and as required by all applicable laws and regulations (collectively "Law"); (3) has performed criminal background checks and/or pre-employment verification of convictions for abuse or neglect when required by Law; and (4) has evaluated and reviewed each person's references, when applicable. Vendor shall provide Facility with evidence of compliance with this paragraph upon request.
 - b) If applicable, Vendor also represents and warrants to Facility that neither Vendor nor any person providing Services on behalf of Vendor is a "Sanctioned Provider" meaning that neither Vendor nor such representatives (i) is currently excluded, debarred, or otherwise ineligible to participate in the Federal health care programs, including but not limited to Medicare, Medicaid or TRICARE, as defined in 42 USC § 1320a-7b(f) (the "Federal health care programs"); (ii) is convicted of a criminal offense related to the provision of health care items or Services and has not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; and (iii) is under investigation or otherwise aware of any circumstances which may result in Vendor or any person engaged by Vendor being excluded from participation in the Federal health care programs. This shall be an ongoing representation and warranty during the term and Vendor shall immediately notify Facility of any change in the status of the representation and warranty set forth in this paragraph. Any breach in this representation shall be cause for Facility to terminate this Agreement immediately without any fee, cost, or penalty.

11. **Access to Records.** As and to the extent required by law, upon the written request of the Secretary of Health and Human Services, the Comptroller General or any of their duly authorized representatives, Vendor shall make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing Services under this Agreement. Such right of inspection shall be available to Facility for up to four (4) years after the rendering of such Services. If Vendor is requested to disclose books, documents or records pursuant to this paragraph for any purpose, Vendor shall notify Facility of the nature and scope of such request, and Vendor shall make available, upon written request of Facility, all such books, documents or records. If Vendor carries out any of the duties of this Agreement through a subcontract with a value of \$10,000.00 or more over a twelve (12) month period with a related individual or organization, Vendor agrees to include this requirement in any such subcontract. This paragraph is included pursuant to and is governed by the requirements to 42 USC § 1395x(v)(1) and the regulations thereto. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by Facility or Vendor by virtue of this Agreement. This Paragraph 11 will survive the termination of this Agreement for any reason.
12. **Confidentiality of Patient Information.** Vendor agrees to protect to the fullest extent required by law the confidentiality of any patient information generated or received by Vendor, its employees, or agents in connection with the performance of Services hereunder. Vendor specifically acknowledges that in receiving, storing, processing, or otherwise handling records of Facility patients, Vendor may be bound by federal laws governing addictive disease patients, including 42 C.F.R. Part 2. Vendor agrees, if necessary, to resist in judicial proceedings any efforts to obtain access to patient records except as permitted by law. Vendor's obligation to maintain the confidentiality of Facility patient information shall survive termination of this Agreement for any reason.
13. **HIPAA Requirements.** To the extent applicable to this Agreement, Vendor agrees to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 USC § 1320d ("HIPAA") and any current and future regulations promulgated thereunder including without limitation the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the "Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Part 142 (the "Federal Security Regulations"), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162, all collectively referred to herein as "HIPAA Requirements." Vendor agrees not to use or further disclose any Protected Health Information (as defined in 45 C.F.R. § 164.501) or Individually Identifiable Health Information (as defined in 42 USC § 1320d), other than as permitted by HIPAA Requirements and the terms of this Agreement. Vendor shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary of Health and Human Services to the extent required for determining compliance with the Federal Privacy Regulations. Vendor's obligation to maintain the confidentiality of HIPAA information shall survive termination of this Agreement. To the extent that Vendor has access to or receives any Protected Health Information or Individually Identifiable Health Information, Vendor agrees to be bound by the terms and conditions of the Business Associate Agreement Addendum attached hereto as **Exhibit D**.
14. **Vaccination Status.** Vendor agrees that (a) Vendor and/or any personnel employed by or contracted with Vendor to provide the Services under this Agreement on site at Facility ("Vendor Personnel") shall be fully vaccinated or have been approved for an exemption under Vendor's exemption policy provided that such exemption is consistent with exemptions permitted under the Centers for Medicare and Medicaid Services Interim Final Rule for Healthcare Staff Vaccination, effective as of November 5, 2021; (b) Vendor shall track and maintain records of Vendor Personnel vaccination/exemption status

including the dates and manufacturer of doses; (c) Vendor shall provide evidence of vaccination/exemption status to Facility on a monthly basis or as more frequently as requested by Facility (response time for Facility request shall be within 2 hours of such request if requested by a state or federal agency); (d) for Vendor Personnel that have been exempted from being vaccinated pursuant to Vendor policies, Vendor shall test such Vendor Personnel on a weekly basis, submit such results the Facility and require such Vendor Personnel to wear a surgical mask at all times at the Facility. Vendor agrees to remove any Vendor Personnel from providing Services at the Facility who (i) tests positive for COVID-19, (ii) is unvaccinated and refuses to wear a surgical mask; or (iii) fails to adhere to the weekly testing requirement. Further, Facility may terminate this Agreement upon one (1) days' notice for Vendor's breach of any of the requirements set forth in this Paragraph 14. Vendor shall indemnify and hold Facility harmless from and against any and all direct and/or indirect damages, including reasonable attorney's fees, resulting from Vendor's breach of this Paragraph 14.

15. **Authorized Signatory.** Vendor acknowledges that only the Chief Executive Officer or Managing Director of Facility is authorized to execute this Agreement on behalf of the Facility or enter into any other transaction or binding the Facility, and that no other employee, agent, officer or any other person has the authority to bind the Facility.

Signatures below by representatives of each of the parties to this Agreement may be done via electronic signature. Pursuant to the *Electronic Signatures in Global and National Commerce Act (E-SIGN)*, S. 761 (106th Congress, 2000) a federal law, effective October 1, 2000, this document is deemed to have the same legal integrity as documents bearing an ink or "wet" signature. All parties to this Agreement acknowledge and represent that the affixed electronic signature carries the same legal weight and authority as the written signature. All parties to this Agreement acknowledge and represent that the electronic signatures have been executed by the individuals named below.

16. **Confidentiality of Facility Information.** Vendor understands and agrees that in connection with Vendor's engagement by Facility, Vendor may acquire competitively sensitive information which is neither known to nor ascertainable by persons not engaged by Facility and which may cause Facility to suffer competitively or economically if such information became known to persons outside of Vendor. Unless legally required to disclose such information, Vendor agrees to maintain the confidentiality of any confidential information Vendor acquires during Vendor's engagement for the entire term of such engagement by Vendor, and for as long as such information remains confidential.

17. **Non Exclusive Agreement.** This Agreement is not exclusive, and either party may contract freely with any other party for the provision of other similar Services.

18. **Arbitration.**

- a) Agreement to Arbitrate. All controversies or claims between the Parties arising out of or relating to the Agreement or any other addenda and exhibits thereto, or the breach, termination or validity thereof, shall be determined exclusively by arbitration held in the County and State in which Facility is located in accordance with the provisions of this Paragraph by a single arbitrator who is selected as provided in subsection (b) below. The arbitrator shall base the award on the agreements and applicable law and judicial precedent. The arbitration shall be governed by the substantive and procedural Laws of the State in which Facility is located and applicable to contracts made and to be performed therein, except that this arbitration provision shall be governed by and interpreted consistent with the Federal Arbitration Act. The decision of the Arbitrator shall be written and reasoned and shall be binding upon the Parties and enforceable in any court of competent jurisdiction. Until the issuance of a final award that may provide otherwise, each Party shall equally bear the costs of Arbitration.

- b) **Selection of Arbitrator.** The arbitrator shall be mutually selected by the Parties hereto. Unless the Parties mutually agree otherwise, the arbitrator shall be an attorney licensed to practice in the location where the arbitration proceeding will be conducted or a retired federal or state judicial officer who presided in the jurisdiction where the arbitration will be conducted. In the event the Parties cannot agree on an arbitrator, the arbitration will be held under the auspices of the American Arbitration Association ("AAA"), and the parties shall select an arbitrator in accordance with the AAA Commercial Arbitration Rules in effect on the date of the Agreement.
- c) **Authority of Arbitrator.** The arbitrator shall have the exclusive authority to decide the scope of issues to be arbitrated. Any challenge to the arbitrability of any issue related in any way to the matters or claims in dispute between the Parties shall be determined solely by the arbitrator. Also, any challenge to the validity of this arbitration provision or any subpart thereof shall be determined and decided exclusively by the arbitrator. The arbitrator will have the authority to hear and decide dispositive motions and will set a briefing schedule for such motion(s) upon the request of either party. A Party may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief in connection with an arbitrable controversy, but only upon the ground that the award to which that Party may be entitled may be rendered ineffectual without such provisional relief.
- d) **Discovery; Arbitration Hearing.** Notwithstanding any AAA rules to the contrary, discovery shall be limited to (1) the production, by all Parties to the arbitration, to the other Parties thereto of documents and electronic records deemed relevant to matters at issue in the arbitration; and (2) to allow each Party to the arbitration to take no more than three (3) depositions, none of which may last more than four hours (exclusive of breaks and adjournments). These limits may be relaxed only upon the express agreement of each of the Parties to the arbitration and the arbitrator. Notwithstanding any AAA rule to the contrary, the Parties hereby agree that once the evidentiary hearing commences, it shall continue day-to-day until completed, with the exception of Saturdays, Sundays and legal holidays. Otherwise, the evidentiary hearing can only be adjourned by agreement of all of the Parties and of the arbitrator for a period of time agreed upon by all of them.

This Paragraph 18 shall survive the termination of this Agreement for any reason.

- 19. **Vendor Compliance.** Vendor agrees to comply with Facility's compliance program for monitoring of federal and state exclusion list sanctions. Facility's compliance program may be conducted by Facility or Facility's third party vendor requiring registration of information and payment of an annual registration fee by Vendor. Vendor shall remain registered with Facility's compliance program (whether managed internally by Facility or by its management vendor) until expiration or earlier termination of this Agreement. In the event Facility changes the compliance program process and/or third party vendors for the monitoring of federal and state exclusion list sanctions during the Term, Facility shall communicate this fact to Vendor in writing and Vendor agrees to register with any new designated compliance management vendor within five (5) business days of such communication.
- 20. **Assignment.** Vendor may not assign or otherwise transfer the Agreement or any of its rights or obligations thereunder. If any person or entity unaffiliated with the Parties acquires control of the Facility or Vendor, directly or indirectly, in a single transaction or series of related transactions, or acquires all or substantially all of the Facility's or Vendor's assets at any time, the Parties may terminate the Agreement within 30 days following the closing of the acquisition, by giving at least 30 days' written notice designating the termination date.
- 21. **Severability.** If any part of this Agreement shall be determined to be invalid, illegal or unenforceable by

any valid Act of Congress or act of any legislature or by any regulation duly promulgated by the United States or a state acting in accordance with the law, or declared null and void by any court of competent jurisdiction, then such part shall be reformed, if possible, to conform to the law and, in any event, the remaining parts of this Agreement shall be fully effective and operative insofar as reasonably possible.

22. **Notice.** All notices, demands, requests, or other communications required to be given or sent by Facility or Vendor, will be in writing and will be mailed by first-class mail, postage prepaid, or transmitted by hand delivery or facsimile, addressed as set forth on the signature page of this Agreement.
23. **Governing Law.** This Agreement shall be construed in accordance with the laws of the state in which Facility is located.
24. **Modification and Waiver.** No modification of this Agreement shall be deemed effective unless in writing and signed by each of the parties hereto. Any waiver of a breach of any provision(s) of this Agreement shall not be deemed effective unless in writing and signed by the party against whom enforcement of the waiver is sought. Neither the waiver by any of the parties hereto a breach of or a default under any of the provisions of this Agreement, nor the failure of either of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, will thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder.
25. **Force Majeure.** The obligations of either party to perform under this Agreement will be excused during each period of delay caused by acts of God or by shortages of power or materials or government orders which are beyond the reasonable control of the party obligated to perform ("Force Majeure Event"). In the event that either party ceases to perform its obligations under this Agreement due to the occurrence of a Force Majeure Event, such party shall: (1) immediately notify the other party in writing of such Force Majeure Event and its expected duration; (2) take all reasonable steps to recommence performance of its obligations under this Agreement as soon as possible. In the event that any Force Majeure Event delays a party's performance for more than thirty (30) days following notice by such party pursuant to this Agreement, the other party may terminate this agreement immediately upon written notice to such party.
26. **No Rights of Third Parties.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors, legal representatives, nor is anything in this Agreement intended to relieve or discharge the obligations or liability of any third persons to any party to this Agreement, nor shall any provisions give any third person any right of subrogation or action over or against any party to this Agreement.
27. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed original, but all of which together shall constitute one and the same agreement. Scanned, photocopied and facsimile signatures shall be deemed original signatures.
28. **Entire Agreement.** This contract contains the entire agreement between the parties with respect to the matter covered by this service agreement and no other agreement, statement or promise, whether oral or written, made by any party, or made to any employee, officer or Vendor of any party, shall be valid or binding on the other party hereto. Any and all terms and conditions contained in Vendor's sales quote or other documentation that conflict with, differ from or that are not expressly included in the provisions of this Agreement are rejected by Facility and shall be of no force or effect.
29. **Conflicts.** This Agreement sets forth the terms and conditions that shall apply to the Services

provided to Facility by Vendor during the Term. Service specifications, pricing, and other additional terms agreed upon by the Parties during the Term shall be set forth in **Exhibit A, Exhibit B** and other attachments / proposals / quotes to this Agreement (collectively, "Service Exhibits"). The Service Exhibits are hereby incorporated into this Agreement by reference and deemed a part hereof. Additional terms in Service Exhibits beyond scope of work and price are not incorporated into this Agreement and are specifically rejected. In the event of a conflict between a Service Exhibit and this Agreement, this Agreement shall control unless the Parties expressly agree otherwise in writing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year indicated below.

FACILITY

By: _____

Its: CEO/CFO/Director

Date: _____

Address: _____

VENDOR

By: 

Its: Superintendent

Date: 5-8-23

Address: 200 Glass Ave
Hopkinsville KY
42240

EXHIBIT A

SERVICES

Vendor shall provide the following Services under this Agreement:

[SERVICE DESCRIPTION]

EXHIBIT B

PAYMENT AND PRICING INFORMATION

- ☐ The sum of \$ [APPLICABLE RATE] per hour; or
- ☐ On a per service basis at the following rate(s) (*specify as needed the rates and frequency applicable to each service*): **[SERVICE DESCRIPTION AND CORRESPONDING PRICE]**
- ☐ At a flat rate of \$ [APPLICABLE RATE] per **[DAY, WEEK, MONTH]**
- ☐ Other: Annual contract price is **[ANNUAL CONTRACT PRICE]**

Vendor's SSN or TIN: [VENDOR SSN OR TIN]

EXHIBIT C

INSURANCE ADDENDUM

Vendor shall, at all times during the term of this Agreement, maintain the following insurance coverage for itself, its employees, independent contractors and agents:

- a) Commercial general liability insurance coverage, naming Facility as additional insured, with a minimum of One Million Dollars (\$1,000,000.00) each occurrence and Two Million Dollars (\$2,000,000.00) in the annual aggregate and Two Million Dollars (\$2,000,000.00) products-comp/ops aggregate, applying to bodily injury, property damage, and liability assumed under any contract. General liability insurance coverage may be satisfied by a combination of primary and excess or umbrella coverage.
- b) Workers' Compensation and employer's liability for Vendor's legal and statutory obligations as required by the laws of the jurisdiction in which the Services are performed, and Vendor shall waive its right of subrogation; and

Depending on the nature of the Services provided by Vendor, Vendor shall carry the following additional insurance coverage (*check all that apply*):

- ☐ Professional liability insurance coverage, with a minimum of ____ Million Dollars (\$____,000,000.00) each occurrence and ____ Million Dollars (\$____,000,000.00) annual aggregate, applying to professional acts and omissions.
- ☒ Commercial Auto Liability insurance coverage with a minimum of One Million Dollars (\$1,000,000.00) combined single limit bodily injury and property damage.
- ☐ Cyber liability insurance coverage (including, but not limited to, coverage for investigations and mitigation of any data breaches or breaches of patient information) relating to errors and omissions liability, network and information security liability, and communications and media liability, with a minimum of ____ Million Dollars (\$____,000,000.00) each occurrence, and ____ Million Dollars (\$____,000,000.00) annual aggregate.
- ☐ Umbrella liability insurance coverage with a minimum of ____ Million Dollars (\$____,000,000.00) each occurrence and ____ Million Dollars (\$____,000,000.00) annual aggregate.
- ☐ Other (specify type(s) and amount(s) of coverage:

Except as otherwise provided herein, neither party waives its rights (or the rights of its insurer) of subrogation.

The above coverage amounts shall be the actual indemnity coverage limit and shall not be reduced

by any expense or costs of litigation including attorney's fees. In the event that such insurance is purchased on a "claims-made" basis, upon termination of this Agreement, Vendor shall either purchase extended reporting period endorsement ("tail") insurance coverage or continue the claims made policy for Services rendered during the term of this Agreement in an amount equal to and otherwise upon the same terms identified herein.

Except for workers compensation insurance, all insurance required of Vendor shall not be materially altered or not renewed without at least thirty (30) days advance written notice to Facility.

VENDOR SHALL PROVIDE CERTIFICATES EVIDENCING THE ABOVE COVERAGE(S). FACILITY SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT UPON WRITTEN NOTICE TO VENDOR FOR ANY BREACH OF THIS ADDENDUM.

EXHIBIT D

BUSINESS ASSOCIATE AGREEMENT ADDENDUM

Facility ("Covered Entity") and Vendor ("Business Associate") entered into a Services Agreement ("Agreement") pursuant to which Business Associate will have access to the protected health information ("PHI") of Covered Entity and/or Covered Entity's managed facilities, as applicable. Business Associate agrees to comply with the terms of this Business Associate Agreement Addendum (this "Business Associate Addendum").

GENERAL PROVISIONS

- A. **Effect.** To the extent that Business Associate receives PHI to perform Business Associate activities, the terms and provisions of this Business Associate Addendum supersede all conflicting or inconsistent terms and provisions of the Agreement to the extent of such conflict or inconsistency.
- B. **Capitalized Terms.** Capitalized terms used in this Business Associate Addendum without definition in the Agreement (including this Business Associate Addendum) shall have the respective meanings assigned to such terms by the Administrative Simplification section of the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act and their implementing regulations as amended from time to time (collectively, "HIPAA").
- C. **No Third-Party Beneficiaries.** The Parties have not created and do not intend to create by the Agreement any third-party rights (including third-party rights for Patients).
- D. **Amendments.** The parties acknowledge and agree that the Health Information Technology for Economic and Clinical Health Act and its implementing regulations impose requirements with respect to privacy, security and breach notification applicable to Business Associates (collectively, the "HITECH BA Provisions"). The HITECH BA Provisions and any other future amendments to HIPAA affecting Business Associate agreements are hereby incorporated by reference into the Agreement as if set forth in the Agreement in their entirety, effective on the later of the effective date of the Agreement or such subsequent date as may be specified by HIPAA.
- E. **Regulatory References.** A reference in this Business Associate Addendum to a section in HIPAA means the section as it may be amended from time-to-time.

DEFINITIONS

Terms used, but not defined below, shall have the meaning as set forth in HIPAA, the HIPAA Regulations, HITECH provisions of the American Recovery and Reinvestment Act of 2009 ("Stimulus Act"), Title XIII and related regulations.

- A. **"Administrative Safeguards"** means safeguards consisting of administrative actions, policies and procedures designed to protect the privacy of PHI from intentional or unintentional use or disclosure in violation of HIPAA and other legal requirements, and to manage the selection, development, implementation, and maintenance of security measures to protect Electronic PHI, as well as managing the conduct of the workforce relating to the protection of that information.

- B. **"Availability"** means the property that data or information is accessible and useable upon demand by an authorized person, as set forth at 45 C.F.R. § 164.304.
- C. **"Breach"** means the unauthorized acquisition, access, use, or disclosure of PHI which compromises the security or privacy of such information. For the purposes of reporting to the Covered Entity under the Agreement, Business Associate shall presume that any unauthorized acquisition, access, use or disclosure of PHI is a "Breach." A Breach excludes:
1. Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of the Covered Entity or Business Associate, if such acquisition, access or use was made in good faith and within the scope of authority and such information is not further acquired, accessed, used or disclosed in a manner not permitted under HIPAA, the HIPAA Regulations, or HITECH;
 2. Any inadvertent disclosure by a person who is authorized to access PHI at a facility operated by Covered Entity or Business Associate to another person authorized to access PHI at the same facility, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under HIPAA, the HIPAA Regulations, or HITECH; or
 3. A disclosure of PHI where Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- D. **"Breach Notification Regulations"** means the rules set forth primarily at set forth primarily at 45 C.F.R. Part 164, Subpart D.
- E. **"Business Associate"** means the entity so designated in the preamble to the Agreement.
- F. **"Confidentiality"** means the property that data or information is not made available or disclosed to unauthorized persons or processes, as set forth at 45 C.F.R. § 164.304.
- G. **"Covered Entities"** or "Covered Entity" means the entity or entities as designated in the preamble to the Agreement.
- H. **"Discovery"** or **"Discovery of a Breach"** means that Business Associate, or an employee, officer or agent of Business Associate, has acquired actual knowledge of a Breach or by the exercise of reasonable diligence should have acquired knowledge of a Breach.
- I. **"Electronic Protected Health Information," "Electronic PHI."** or **"ePHI"** means PHI in electronic form. All references to "Protected Health Information" or "PHI" in the Agreement include ePHI.
- J. **"Encrypted"** or **"Encryption"** means the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key, as set forth at 45 C.F.R. § 164.304.
- K. **"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996 Pub. L. No. 104-191.
- L. **"HIPAA Regulations"** means the Privacy Regulations, the Security Regulations, the Breach Notification Regulations and such other applicable regulations set forth in 45 C.F.R. Parts 160 and 164.
- M. **"HITECH"** or **"HITECH Act"** means the Health Information Technology for Economic and Clinical Health Act privacy and security provisions of the Stimulus Act and implementing regulations.

- N. **"Identifiers"** means the identifiers listed in the HIPAA Privacy Rule at 45 C.F.R. Section 164.514(b)(2), which include, among other identifiers: name, address, zip code, all elements of dates other than the year that directly relating to an individual (such as birthdate, admission date, discharge date, date of death), telephone numbers, email address, fax numbers, social security numbers, medical record numbers, vehicle identifiers, license numbers, and all other identifiers of an individual, or of the individual's relatives, employers, or household members described in Section 164.514(b)(2).
- O. **"Individual"** means the person who is the subject of PHI and shall include a person who qualifies as a personal representative under 45 C.F.R. Section 164.502(g).
- P. **"Integrity"** means the property that data or information have not been altered or destroyed in an unauthorized manner, and that data from one system is consistently and accurately transferred to other systems, as set forth at 45 C.F.R. § 164.304.
- Q. **"Part 2"** means the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations set forth at 42 USC §290dd-2 and 42 CFR Part 2.
- R. **"Physical Safeguards"** means safeguards consisting of physical measures, policies, and procedures to protect electronic information systems and related buildings and equipment, from natural and environmental hazards and unauthorized intrusion.
- S. **"Protected Health Information" or "PHI"** means individually identifiable health information created, maintained, transmitted or received by Business Associate from or on behalf of a Covered Entity 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, or the past, present, or future payment for the provision of health care to an Individual, as set forth at 45 C.F.R. § 160.103. PHI can be oral, written, electronic, or recorded in any other form. All references to "Protected Health Information" or "PHI" in the Agreement include Electronic Protected Health Information (ePHI).
- T. **"Privacy Regulations"** means the rules set forth primarily at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- U. **"Qualified Service Organization" or "QSO"** means a person or entity that provides services to a Part 2 program, such as data processing, bill collecting, dosage preparation, laboratory analyses, or legal, accounting, population health management, medical staffing, or other professional services, or services to prevent or treat child abuse or neglect, including training on nutrition and child care and individual and group therapy and has entered into an agreement with a Part 2 program.
- V. **"Required by Law"** means a mandate contained in law that compels an entity to make a use or disclosure of PHI and that is enforceable in a court of law, as set forth at 45 C.F.R. § 164.103. Required by Law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- W. **"Secretary" or "HHS Secretary"** means the Secretary of the Department of Health and Human Services ("HHS").

- X. **“Security Incident”** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, as set forth at 45 C.F.R. § 164.304. The term “Security Incident” is very broad and includes attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations.
- Y. **“Security Measures”** relates to the means (process and technology) by which a Covered Entity and/or Business Associate protect the privacy and security of information, as set forth at 45 C.F.R. § 164.304. Security Measures keep information secured, and decrease the means of tampering, destruction, or inappropriate access. Security Measures encompass all of the administrative, physical, and technical safeguards in an information system.
- Z. **“Security Regulations”** means the rules set forth primarily at 45 C.F.R. Part 160 and Part 164, Subparts A and C.
- AA. **“Subcontractor”** means a person or entity to whom the Business Associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of the Business Associate, whether by written agreement or otherwise.
- BB. **“Technical Safeguards”** means safeguards consisting of technology and the policy and procedures for the use of the technology that protect ePHI and control access.
- CC. **“Unsecured PHI”** means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the HHS Secretary in the guidance issued under section 13402(h)(2) of HITECH on the HHS Web site.

SECTION I

OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- 1.1 Business Associate agrees not to use or disclose PHI (“PHI”) except as permitted or required by the Agreement or as Required by Law. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by the Agreement.
- 1.2 Business Associate and its agents or Subcontractors, if any, shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure in accordance with HIPAA, the HIPAA Regulations and HITECH.
- 1.3 Business Associate agrees to use appropriate safeguards and comply with the applicable requirements of the HIPAA Regulations, including 45 CFR Subpart C with respect to ePHI and Subpart E of 45 CFR with respect to PHI. This shall include, without limitation, using appropriate Security Measures and developing, implementing, maintaining and using appropriate and reasonable Administrative, Physical, and Technical Safeguards for the privacy and security of PHI to ensure the Integrity, Confidentiality and Availability of, and to prevent non-permitted uses and disclosures of PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity. Business Associate further acknowledges and agrees that pursuant to HITECH it will implement and document its Security Measures and will comply with 45 C.F.R. sections 164.306 (Security Standards), 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.314 (Organizational Safeguards), and 164.316 (Policy and Procedures and documentation requirements), and all other applicable requirements of HIPAA, the HIPAA Regulations, HITECH and other applicable

privacy and security Laws. Business Associate agrees to adopt the technology and methodology standards provided in guidance issued by the HHS Secretary pursuant to HITECH.

- 1.4 Business Associate agrees to take prompt action to correct any deficiencies and to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of an access, use, disclosure, modification or destruction of PHI by Business Associate, its agents or Subcontractors, if any, in violation of the requirements of the Agreement.
- 1.5 Business Associate agrees to promptly notify Covered Entity within forty-eight (48) hours of any access, use, disclosure, modification or destruction of PHI not provided for by the Agreement or that is in violation of the requirements of the Agreement, and to provide Covered Entity or its designee such information as may be reasonably requested by Covered Entity to investigate the violation. Business Associate shall report to Covered Entity any Security Incident of which it becomes aware. If Business Associate has been requested orally or in writing by law enforcement officials that notification of affected Individuals of a Breach may impede a criminal investigation, Business Associate shall so inform Covered Entity. In the event of a Breach of PHI caused by Business Associate or anyone acting on its behalf, Business Associate shall be responsible for all costs and expenses of responding to the Breach, including without limitation, the costs of notifying Individuals of the Breach. Nothing in this section shall limit any other rights or remedies of Covered Entity.
- 1.6 Business Associate further agrees to provide a report in writing to Covered Entity within ten (10) days of, and to cooperate with Covered Entity in investigating and resolving, any of the following as they relate to PHI under the Agreement:
 - a) Any unauthorized access, use, disclosure, modification or destruction of PHI of which Business Associate becomes aware;
 - b) Any Security Incident of which Business Associate becomes aware; or
 - c) Any Breach or potential Breach of Unsecured PHI of which Business Associate becomes aware. In such event, Business Associate will document its investigation and provide such additional information as may reasonably be requested to enable Covered Entity to determine the extent to which the PHI has been compromised. Notice to affected Individuals will be made by or at the direction of Covered Entity at Business Associate's expense.

The written report from Business Associate required by this Section shall set forth the following:

- a) A brief description of what happened, including the date of any unauthorized access, use, disclosure, modification or destruction, and, if known, the date of Discovery, the number of individuals affected, the time period involved, and the nature and extent of any harm resulting from the violation;
- b) A description of the type(s) of PHI and Identifiers involved (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, and other types of information were involved);
- c) Information regarding whether and to what extent the PHI was Unsecured PHI, Encrypted, or was rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the HHS Secretary in the guidance issued under section 13402(h)(2) of HITECH on the HHS Web site;
- d) A description of the manner in which the PHI could be identified or, if known, how and whether the PHI could be re-identified;
- e) To the extent possible, the name of each Individual whose PHI has been, or is reasonably believed to have been accessed, used, disclosed, modified or destroyed;

- f) To the extent possible, the name of the unauthorized person and entity who used the PHI or to whom the disclosure was made;
- g) To the extent possible, whether the unauthorized person or entity is another covered entity, business associate, employee of Business Associate, Subcontractor or entity affiliated with Business Associate;
- h) Whether any opportunity existed for an unauthorized person to acquire, view, transfer or otherwise compromise the PHI;
- i) Whether the PHI was actually acquired, viewed, transferred or otherwise compromised by an unauthorized person;
- j) Any steps Individuals should take to protect themselves from potential harm resulting from the unauthorized access, use, disclosure, modification or destruction of PHI; and
- k) A description of what the Business Associate is doing to investigate, mitigate harm to Individuals, and protect against any further unauthorized access, use, disclosure, modification or destruction of PHI.

1.7 Business Associate agrees that any Subcontractor that creates, receives, maintains, or transmits PHI on behalf of the Business Associate or Covered Entity will enter into in an enforceable written HIPAA-compliant business associate agreement requiring that the Subcontractor:

- a) agrees to comply with the HIPAA Privacy Regulations, HIPAA Security Regulations, HITECH law, and other applicable state, Federal and local Laws and regulations related to privacy and security of PHI, including ePHI;
- b) agrees to the same restrictions, reporting and contracting obligations, and conditions that apply in the Agreement to Business Associate with respect to PHI including, by way of example and without limitation, that the Subcontractor develop, implement, maintain and use appropriate and reasonable Security Measures and Administrative, Physical, and Technical Safeguards for the privacy and security of PHI to ensure the Integrity, Confidentiality and Availability of, and prevent non-permitted access, use, disclosure, modification or destruction of PHI, including ePHI; that the Subcontractor enter into business associate agreements with its subcontractors that create, receive, maintain or transmit PHI on behalf of Subcontractor, Business Associate or Covered Entity; and that the Subcontractor adopt a HIPAA compliance program and policies and procedures.

If Business Associate becomes aware of a pattern of activity or practice of a Subcontractor that constitutes a material breach of their written business associate agreement, Business Associate shall take reasonable steps to cure the breach or end the violation, as applicable, and if such steps are unsuccessful, terminate the contract.

1.8 Business Associate shall provide notice within ten (10) days of the receipt of a request from an Individual (or their authorized personal representative) for access to, amendment to, an accounting of disclosures of, a copy or electronic copy of, or a restriction on the use or disclosure of PHI.

1.9 Business Associate agrees to provide access to and copies of PHI maintained in a Designated Record Set to Covered Entity or, when requested in writing by Covered Entity, to an Individual in order for Covered entity to meet the requirements of 45 C.F.R. §164.524. Business Associate shall provide access to and copies of PHI in a reasonable time, not to exceed fifteen (15) days (unless the Parties reasonably agree otherwise in writing) and in a reasonable manner. If requested by Covered Entity or an Individual, Business Associate shall provide access to ePHI to Covered Entity or, when requested in writing by Covered Entity, to an Individual in the electronic form and format requested by Covered Entity or by the Individual, as applicable, if it is readily producible and, if not, in a readable electronic form and format as agreed by the Covered Entity or Individual, as applicable.

- 1.10 Business Associate agrees to make its internal practices, books, and records 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 Secretary, in the time and manner designated by the Secretary, for purposes of the Secretary determining compliance with the HIPAA Regulations. Upon receipt of a request from the Secretary, Business Associate shall notify Covered Entity in writing unless such notification would be contrary to law.
- 1.11 Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that Covered Entity determines is required to enable Covered Entity to comply with 45 C.F.R. §164.526. Except for good cause shown in writing to Covered Entity, Business Associate shall act upon Covered Entity's request for an amendment within thirty (30) days of receipt Covered Entity's request.
- 1.12 Business Associate agrees to identify, track and document disclosures of PHI and other 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 C.F.R. §164.528. Business Associate agrees to provide the information collected to Covered Entity or to an Individual when requested by Covered Entity, in writing and not later than thirty (30) days after receiving a request under this subsection, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. Upon written request, Business Associate shall furnish to Covered Entity a copy of its policies or procedures that it has, and will maintain, that describe how it carries out its obligations under this subsection.
- 1.13 Business Associate agrees that if it has a legal obligation to disclose any PHI, it will notify Covered Entity as soon as reasonably practicable after it learns of such obligation, sufficiently in advance of the proposed release date such that the rights of Covered Entity and the Individual to whom the PHI relates would not be prejudiced. If Covered Entity or the Individual objects to the release of such PHI, Business Associate will allow Covered Entity and/or the Individual to exercise any legal rights or remedies Covered Entity and/or the Individual might have to object to the release of the PHI, and Business Associate agrees to provide such assistance as Covered Entity or the Individual may reasonably request in connection therewith.

1.14 Part 2 Provisions:

- a) To the extent that in performing its services for or on behalf of Covered Entity, Business Associate uses, discloses, maintains, or transmits protected health information that is protected by Part 2, Business Associate acknowledges and agrees that it is a QSO for the purpose of such federal law; acknowledges and agrees that in receiving, storing, processing or otherwise dealing with any such patient records, it is fully bound by the Part 2 regulations; and, if necessary will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the Part 2 regulations.
- b) Notwithstanding any other language in the Agreement, Business Associate acknowledges and agrees that any patient information it receives from Covered Entity that is protected by Part 2 is subject to protections that prohibit Business Associate from disclosing such information to agents or subcontractors without the specific written consent of the subject individual.
- c) Business Associate acknowledges that any unauthorized disclosure of information under this section is a federal criminal offense.

SECTION II

PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 2.1 **General Use and Disclosure Provision.** Business Associate agrees to use or disclose PHI only as permitted or required for the purpose of performing its obligations under the Agreement, provided such use or disclosure of PHI would not violate the HIPAA Regulations if done by Covered Entity, including the minimum necessary requirements in the HIPAA Regulations and Subpart E of 45 CFR Part 164, or violate the terms of the Agreement.
- 2.2 **Specific Use and Disclosure Provisions:**
- a) Except as otherwise limited in the Agreement, Business Associate may use and disclose PHI for the proper management and administration of the Business Associate or to carry out its legal responsibilities, 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 notified the Business Associate of any instances of which it is aware in which the Confidentiality of the information has been breached.
 - b) Only when specifically authorized by Covered Entity in writing separate from the Agreement or in accordance with a specific provision of the Agreement, Business Associate may use PHI: (a) to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. §164.504(e)(2)(i)(B); or (b) to create de-identified health information in accordance with 45 C.F.R. §164.514.
 - c) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §164.502(j)(1).
- 2.3 **Offshore PHI Prohibition.** Without express written consent from Covered Entity, Business Associate shall not, and shall ensure that its agents or Subcontractors shall not, a) disclose, transmit, create or maintain any PHI outside of the United States, or b) access, use, maintain, transmit, create, receive or disclose PHI while outside of the United States.

SECTION III

OBLIGATIONS OF COVERED ENTITY

- 3.1 Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices, prepared for compliance with 45 C.F.R. §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- 3.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- 3.3 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 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- 3.4 Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Regulations if done by Covered Entity.

SECTION IV

TERM AND TERMINATION

- 4.1 **Term.** The term of this Business Associate Addendum shall be effective as of the Effective Date of the Agreement, and shall terminate after the exercise of any of the termination provisions of the Agreement and as set forth below and 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 and no copies of PHI are retained, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- 4.2 **Termination by Covered Entity.** Covered Entity may immediately terminate this Business Associate Addendum and any Agreement if Covered Entity makes the determination that Business Associate has breached a material term of this Business Associate Addendum. Alternatively, Covered Entity may provide Business Associate with thirty (30) days written notice of the existence of an alleged material breach and afford Business Associate an opportunity to cure upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved within thirty (30) days, Business Associate must cure said breach to the satisfaction of the Covered Entity. Failure to cure in the manner set forth in this Section is grounds for the immediate termination of this Business Associate Addendum and any Agreement. Nothing contained herein shall be deemed to require Covered Entity to terminate this Business Associate Addendum or the Agreement if termination is not feasible.
- 4.3 **Termination by Business Associate.** If Business Associate makes the determination that a condition material to the performance of this Business Associate Addendum has changed under any Agreement, or that Covered Entity has breached a material term of this Business Associate Addendum, Business Associate may provide thirty (30) days' notice of its intention to terminate this Business Associate Addendum and the Agreement. Business Associate agrees, however, to cooperate with Covered Entity find a mutually satisfactory resolution to the matter prior to terminating and further agrees that, notwithstanding this provision, it shall not terminate this Business Associate Addendum so long as any Agreement is in effect.
- 4.4 **Automatic Termination.** This Business Associate Addendum will automatically terminate without any further action of the Parties upon the termination or expiration of the last Service Agreement in effect between the Parties.
- 4.5 **Effect of Termination.** Upon any termination pursuant to this Section or otherwise, Business Associate shall return or destroy all PHI pursuant to 45 C.F.R. §164.504(e)(2)(ii)(J) if it is feasible to do so, and shall not retain any copies of the PHI. If return or destruction is not feasible, Business Associate will notify Covered Entity in writing, including: (i) a statement that Business Associate has determined that it is infeasible to return or destroy the PHI, and (ii) the specific reason(s) for such determination, which reason(s) must be agreed to by Covered Entity. Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Business Associate Addendum to Business Associate's use and/or disclosure of any PHI retained after the termination of this Business Associate Addendum, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. Business Associate further agrees to recover any PHI in the possession of its Subcontractors or agents and to return or destroy the PHI as set forth in this Section; if infeasible, Business Associate must provide a written explanation to Covered Entity and require the Subcontractors and agents to agree to extend any and all protections, limitations and restrictions

contained in this Business Associate Addendum to the Subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Business Associate Addendum, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

SECTION V

INSURANCE AND INDEMNIFICATION

Business Associate shall maintain or cause to be maintained Professional / Technology Liability insurance and Network Security & Privacy Liability insurance covering liabilities for financial loss resulting or arising from acts, errors, or omissions, in connection with the services provided under the Agreement, as well as all Business Associate costs, including damages it is obligated to pay Covered Entity or any third-party, which are associated with any Security Breach (as hereafter defined) or loss of Confidential or Personal Information, regardless of cause (including, without limitation, Vendor negligence or gross negligence and unlawful third-party acts). Costs to be covered by this insurance policy shall include without limitation: (a) costs to notify individuals whose Personal Information was lost or compromised; (b) costs to provide credit monitoring and credit restoration services to individuals whose Personal Information was lost or compromised; (c) costs associated with third-party claims arising from the Security Breach or loss of Personal Information, including litigation costs and settlement costs; and (d) any investigation, enforcement or similar miscellaneous costs. Such insurance shall provide coverage for up to \$10,000,000.00 (10 million dollars). For the purposes of this Section, " Security Breach" means (1) the failure by the Business Associate to properly handle, manage, store, destroy or otherwise control, or the unauthorized disclosure by the Business Associate of: (a) Personal Information in any format or (b) third-party corporate information in any format specifically identified as confidential and protected under a confidentiality agreement or similar contract; (2) an unintentional violation of the Business Associate's privacy policy or misappropriation that results in the violation of any applicable data privacy Laws or regulations; or (3) any other act, error, or omission by Business Associate in its capacity as such which is reasonably likely to result in the unauthorized disclosure of Personal Data.

Business Associate shall indemnify, defend and hold harmless Covered Entity and its parent corporation, subsidiaries and related entities, their directors, officers, agents, servants, and employees (collectively "the Indemnitees") from and against all claims, causes of action, liabilities, judgments, fines, assessments, penalties, damages, awards or other expenses of any kind or nature whatsoever, including, without limitation, attorney's fees, expert witness fees, and costs of investigation, litigation or dispute resolution, incurred by the Indemnitees and relating to or arising out of any breach or alleged breach of the terms of the Agreement by Business Associate or any agent or Subcontractor of Business Associate.

Nothing herein shall limit any obligations of Business Associate to indemnify and provide insurance as set forth in the Services Agreement or otherwise, and no terms of the Services Agreement or any other agreement between the parties shall limit the requirements of this Section.

SECTION VI

AUDITS

Business Associate shall audit its compliance with the requirements of the Agreement at least annually during the term of the Agreement (and more frequently as needed in order to address operational or electronic systems changes) including without limitation, its Security Measures and its Administrative, Physical, and Technical Safeguards. Business Associate agrees that in the event of a Breach or other violation of the Agreement by Business Associate, or any agent or Subcontractor of Business Associate, Covered Entity may have an assessment of compliance conducted utilizing a third-party designated by Covered Entity, at Business Associate's expense, and Business Associate shall reasonably cooperate with Covered Entity to implement corrective actions. When Covered Entity has a reasonable, good faith belief that there has been a Breach or other violation of the Agreement, Covered Entity may have such third-party assessment conducted at Covered Entity's expense, and if a Breach or violation is found, Business Associate shall be responsible for the costs of the third-party assessment, and shall reasonably cooperate with Covered Entity to implement corrective actions. Business Associate shall make such audits, assessments, and related documentation available for review by Covered Entity upon request. Nothing in this Section 7 shall limit any other rights or remedies of Covered Entity.

SECTION VII

FURTHER ASSURANCES

The parties agree that from time to time they will amend the Agreement to account for changes in the applicable law or regulations including, without limitation, those arising out of the HITECH Act or other applicable acts and regulations subsequently promulgated and that, on and after the effective date of the Agreement, such then applicable provisions shall be incorporated by reference into the Agreement as written until such time as the parties may amend the Agreement to otherwise specifically provide for the subject matter of such provisions but in no case for a period longer than one year from the effective date of any such statutory or regulatory provision, during which time the parties shall negotiate further assurances in good faith.