

PRODUCT AND SERVICE AGREEMENT

THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION

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

Vendor has agreed to render the Services (as defined below) and/or provide Products (as defined below) as more particularly described in **Exhibit A** which is attached and incorporated into this Agreement, and Facility has agreed to compensate Vendor for Services rendered and/or such Products provided.

In the event of a conflict or material difference in terms between Vendor's invoice, proposal 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; Provision of Products.** If applicable to this Agreement, Vendor shall provide to Facility the services described in **Exhibit A** (the "Services") on an as needed basis or upon the schedule identified in **Exhibit A**. If applicable to this Agreement, the Vendor shall provide to Facility the products described in **Exhibit A** (the "Products").
2. **Payments.** Facility agrees to pay Vendor according to the terms described in **Exhibit B** which is attached and incorporated into this Agreement by reference, 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 forty-five (45) days of the receipt of Vendor's undisputed invoice.
3. **Term and Termination; Suspension.**
 - a) **Term.** The term of this Agreement shall commence on the date of the last signature and shall continue in full force and effect for one (1) year (the "Term"), unless the Agreement is sooner terminated in accordance with the provisions herein.
 - b) **Termination Without Cause.** At any time during the Term of this Agreement, Facility may terminate this Agreement for any reason or no reason upon at least thirty (30) days prior written notice to Vendor. In the event that Facility terminates for convenience, its sole obligation to Vendor will be to pay for Services completed or Products delivered by Vendor prior to the effective date of termination.
 - c) **Termination for Cause.** This Agreement may be terminated in whole or in part by either party if the other party breaches or otherwise fails to fulfill any obligation in this Agreement and such failure or breach continues and/or is uncured for thirty (30) days after written notice to the breaching party from the non-breaching party.
4. **Insurance.** Vendor shall comply with the requirements of the Insurance Addendum attached and incorporated into this Agreement as **Exhibit C**.
5. **Compliance with Facility Rules; Subcontractors.**
 - a) Vendor agrees to instruct its employees and/or subcontractors ("Vendor Personnel") 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 all Vendor Personnel will participate in any orientation or training deemed necessary by Facility for the

Services being provided. Notwithstanding anything to the contrary within this Agreement, Facility reserves the absolute right to deny access to its premises to any individuals that pose a risk to the safety of Facility's patients, employees, other vendors or visitors, or that otherwise cause a disruption to Facility's business operations.

- b) 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 be responsible for all claims, liabilities and damages caused by subcontractor, as well as for all acts or omissions of such subcontractors.

- 6. **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 Vendor Personnel providing Services and/or Products under this Agreement are solely employed or contracted 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, defend and hold harmless Facility, its affiliates, officers, agents and employees from and against any employment related claims raised by Vendor Personnel including, but not limited to, discrimination, wrongful discharge, ERISA or wage claims.

- 7. **Indemnification.** Vendor shall indemnify, protect, defend and hold harmless Facility, its affiliates, 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, the Vendor Personnel, its other personnel, subcontractors, or agents; (ii) a defect in any Product provided under this Agreement; (iii) a breach of the Agreement or any applicable addenda hereto; (iv) a violation of any Law by Vendor, the Vendor Personnel, its other personnel, subcontractors, or agents; or (v) a claim or allegation that the Services, Products or any components thereof infringe upon or violate the copyright, trademark or other intellectual property right of any third party (hereinafter said Claims are referred to as the "Indemnifiable Claims"). Vendor (upon notice from an Indemnatee) shall defend the Indemnifiable Claim at Vendor's expense by legal counsel reasonably satisfactory to Indemnatee and Indemnatee shall have the right (but not the obligation) to participate with Vendor in such defense. For the avoidance of doubt, Indemnatee 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 7), 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 7 shall survive the termination of this Agreement for any reason.

- 8. **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). The federal anti-kickback statute, 42 U.S.C. § 1320a-7b(b), prohibits certain activities in connection with referring or arranging

for business paid for by federal health care programs. It is the intent of the parties to establish a business relationship that complies with the federal anti-kickback statute. To the extent Vendor provides Facility with price concessions on purchases under this Agreement, such concessions shall be as permitted under the statutory exceptions and “safe harbor” regulations for discounts as set forth at 42 U.S.C. § 1320a-7b(b)(3)(A) and 42 C.F.R. § 1001.952(h). To the extent applicable, the Parties intend to comply with the requirements of the statutory exceptions and “safe harbor” regulations for payments to group purchasing organizations as set forth at 42 U.S.C. § 1320a-7b(b)(3)(C) and 42 C.F.R. § 1001.952(j). The pricing set forth in the Agreement shall be reflective of all price reductions or price concessions that are being provided at the time of purchase.

9. **Vendor’s Representations and Warranties.**

- a) Vendor represents and warrants that all Vendor Personnel providing Services under this Agreement: (1) have been educated and trained, consistent with applicable regulatory requirements and Facility policy; (2) are appropriately licensed, certified or registered, pursuant to applicable local, state, or federal law, to provide the Services contemplated in this Agreement; and (3) have appropriate knowledge, experience and competence as are appropriate for such Vendor Personnel’s assigned responsibilities as required by Facility.
- b) If Vendor is providing Products under this Agreement, then Vendor warrants that any Products provided by Vendor under this Agreement will meet and/or conform to all specifications and/or documentation related to such Products, shall be in good and marketable condition free from any liens or security interests, shall be free from any defects, shall comply with all applicable Laws governing the same (including, if applicable, any FDA labeling specifications), and shall not infringe upon the intellectual property rights of any third party.
- c) If Vendor is providing Services under this Agreement, then Vendor warrants that the Services provided under the Agreement will be performed in a professional and workmanlike manner consistent with applicable industry standards and at all times in full accordance with applicable Law.
- d) If Vendor Personnel will be on site at Facility’s premises, then Vendor additionally represents that: (1) each person performing Services under this Agreement has been oriented to Facility policies and procedures; (2) it has verified the health status of each such Vendor Personnel as required by his or her duties in providing the Services under this Agreement and as required by all applicable local, state and/or federal laws and regulations (collectively, “Law”); (3) it has performed criminal background checks and/or pre-employment verification of convictions for abuse or neglect (when required by Law) on each such Vendor Personnel; and (4) it has evaluated and reviewed each such person’s references, when applicable. Vendor shall provide Facility with evidence of compliance with this paragraph upon request.
- e) Vendor also represents and warrants to Facility that neither Vendor nor any Vendor Personnel is a “Sanctioned Provider” meaning that neither Vendor nor any Vendor Personnel (i) are 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) are 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; or (iii) are under investigation or otherwise aware of any circumstances which may result in Vendor or any Vendor Personnel 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.

10. **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 and/or Products under this Agreement. Such right of inspection shall be available for up to four (4) years after the rendering of such Services or Products. 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 10 will survive the termination of this Agreement for any reason.

11. **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 or Vendor Personnel in connection with the performance of Services or provision of Products 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. This Paragraph 11 will survive the termination of this Agreement for any reason.
12. **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 comply with the terms of the Business Associate Addendum attached hereto as **Exhibit D**.
13. **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.

14. **Confidentiality of Facility Information.** In the performance of this Agreement, Facility may disclose its Confidential Information to the Vendor. “Confidential Information” shall refer to the Facility’s proprietary or confidential information, trade secrets or know-how, or other sensitive and private information, including, without limitation, service plans, services, patients, markets, developments, processes, designs, drawings, methods, systems, sales and profit figures, pricing, pricing strategies, finances, employee information, and other business information disclosed by the Facility, directly or indirectly, whether in writing, orally or by drawings or inspection of documents or other tangible property. With regard to the Confidential Information, Vendor agrees to take the same steps that it takes to protect its own confidential information from unauthorized disclosure to third parties, but in no event shall it exercise less than a reasonable standard of care based on the nature of such information and, to the extent applicable, subject to any safeguards required by Law. Vendor agrees to only utilize the Confidential Information as necessary to perform its obligations under this Agreement or to comply

with applicable Law. Vendor may disclose the Confidential Information to its employees, agents, attorneys, accountants and other representatives with a need to know such information, provided such individuals are subject to confidentiality obligations no less restrictive than the confidentiality obligations herein. Notwithstanding the foregoing, excluding any personally identifiable information, Confidential Information shall not include information that (i) is or becomes known to the public through no act or omission of Vendor or its employees or representatives; (ii) is already rightfully in the Vendor's possession at the time of disclosure and not otherwise subject to non-disclosure or confidentiality obligations; (iii) is requested or required by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand, demand from a governmental agency of competent jurisdiction, or other similar process to be disclosed, provided that Vendor shall promptly notify Facility of any such request and provide Facility with the reasonable opportunity to contest such disclosure; or (iv) is received by Vendor from another person or entity who is not obligated to keep the same confidential. Within ten (10) business days of the expiration or termination of this Agreement, or upon the request of Facility generally, Vendor shall return all Confidential Information in its possession to Facility (including any copies, synopses, summaries and studies thereof), or destroy such information (including executing file erasure procedures), and provide a certification to Facility confirming the same has been performed. These requirements shall survive for four (4) years following expiration of the Term.

15. **Non Exclusive Agreement.** This Agreement is not exclusive, and either party may contract freely with any other individual or entity for the provision of other similar Services or Products.
16. **Arbitration.**
 - a) **Requirement to Arbitrate.** All controversies or claims, past, present, or future, between the parties that otherwise would be resolved in court or before a forum other than arbitration, including, without limitation, disputes arising out of or relating to this Agreement or the breach, termination or validity hereof, shall be determined exclusively by a single arbitrator by final and binding arbitration, in accordance with the provisions of this Agreement. The arbitrator shall base the award on this Agreement and applicable Law and judicial precedent and apply the substantive and procedural Laws of the State in which Facility is located, except that these arbitration requirements shall be governed by and interpreted under the Federal Arbitration Act ("FAA") (9 U.S.C. § 1 et seq.). The decision of the arbitrator shall be binding upon the parties and enforceable in any court of competent jurisdiction. No demand for arbitration shall be made after the date when the institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by an applicable statute of limitations or repose, and no arbitrator shall have the power to issue any award in an arbitration demanded after such date. Unless prohibited by applicable Law as determined by the arbitrator, the parties agree to equally split the fees and costs of arbitration, including the arbitrator's fees; provided, however, the arbitrator may award the costs and fees of the arbitration to the prevailing party in such manner as may be determined by the arbitrator. Each party will pay for its own costs and attorneys' fees, if any, except that the arbitrator may award reasonable fees to the prevailing party as provided by applicable Law or this Agreement.
 - b) **Selection of Arbitrator and Location.** The arbitrator shall be mutually selected by the parties hereto. Unless the parties mutually agree otherwise, the arbitrator must be an attorney licensed to practice in the location where the arbitration proceeding will be conducted or a retired federal or state judicial officer from any jurisdiction. In the event the parties cannot mutually agree on an arbitrator, the arbitration shall be held under the auspices of the American Arbitration Association ("AAA"), under the then current AAA Commercial Arbitration Rules ("AAA Rules"); provided however, that if there is a conflict between the AAA Rules and this Agreement, this Agreement shall govern. If the AAA will not administer the arbitration or is unwilling to administer the arbitration consistent with this Agreement, either party may apply to a court of competent jurisdiction with authority over the location where the arbitration will be conducted to appoint a neutral arbitrator, who shall act under this Agreement with the same force and effect as if he or she had been specifically named herein. The location of the arbitration proceeding shall be in the County (or equivalent geographic jurisdiction) where the Facility is located, unless each party agrees otherwise in writing.
 - c) **Authority of Arbitrator and Procedures.** The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the validity, scope, applicability,

enforceability, or waiver of this Agreement including, but not limited to, any claim that all or any part of this Agreement is void or voidable, except for the Class Action Waiver as defined and described below. Each party may file a dispositive motion and the arbitrator will set a briefing schedule for such motion(s) upon the request of either party. A party may make an offer of judgment in a manner consistent with, and within the time limitations, consequences and effects provided in Rule 68 of the Federal Rules of Civil Procedure. 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. The court to which the application is made is authorized to consider the merits of the arbitrable controversy to the extent that it deems necessary in making its ruling. All determinations of final relief, however, will be decided in arbitration. A court of competent jurisdiction shall have the authority to enter judgment upon the arbitrator's decision/award.

- d) Discovery; Arbitration Hearing. Each party may depose three (3) individual fact witnesses and any expert witness designated by the other party. Each party may also propound requests for production of documents to the other party and each party may also subpoena witnesses and documents for discovery or the arbitration hearing, including testimony and documents relevant to the case from third parties, in accordance with any applicable state or federal Law. Additional discovery may be conducted by mutual stipulation, and the arbitrator will have exclusive authority to entertain requests for additional discovery, based on the arbitrator's discretion.
- e) Class Action Waiver. The parties waive any right for any dispute arising from or related to this Agreement to be brought, heard, decided, or arbitrated as a class or collective action and multiple arbitrations may not be consolidated or coordinated before a single arbitrator (the "Class Action Waiver"). Notwithstanding anything to the contrary in this Agreement and/or the AAA Rules (if applicable), any claim that all or any part of this Class Action Waiver is unenforceable, inapplicable, unconscionable, or void or voidable, shall be determined only by a court of competent jurisdiction and not by an arbitrator. This Class Action Waiver shall be severable from this Agreement if there is a final judicial determination that the Class Action Waiver is invalid, unenforceable, unconscionable, void or voidable. In such case, the class and/or collective action shall be litigated in a civil court of competent jurisdiction—not in arbitration—but the part of the Class Action Waiver that is enforceable shall be enforced in arbitration.

This Paragraph 16 does not apply to any claim(s) or disputes that an applicable federal statute expressly states cannot be arbitrated or subject to a pre-dispute arbitration agreement. This Paragraph 16 shall survive the termination of this Agreement for any reason.

- 17. **Sanction Monitoring.** Vendor agrees to register with Facility's program for the monitoring of federal and state exclusion list sanctions. Facility's sanction monitoring program may be conducted by Facility individually 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 sanction monitoring program until expiration or earlier termination of this Agreement.
- 18. **Facility Code of Conduct.** Vendor acknowledges that Facility conducts its operations and business in full compliance with applicable Law, in accordance with high ethical standards, and in accordance with UHS of Delaware, Inc.'s Corporate Compliance Program and Code of Conduct located at <https://uhs.com/about-universal-health-services/compliance-program/contractors-vendors-suppliers/>. Vendor acknowledges and agrees that (a) it shall perform all obligations under this Agreement in full compliance with all applicable Laws, (b) it has reviewed the Code of Conduct and agrees to perform its obligations under this Agreement in accordance with the principles and spirit of the Corporate Compliance Program and Code of Conduct, and (c) it shall notify Facility of any matters that may come to Vendor's attention that may place Facility or Vendor at risk for non-compliance with the same by contacting UHS of Delaware, Inc.'s Compliance Hotline at 800-852-3449.
- 19. **ESG; Anti-Corruption; Anti-Human Trafficking.**
 - a) Vendor shall at all times comply with all environmental, social and governance ("ESG") laws and regulations applicable to its performance under this Agreement, as well as all applicable laws and

regulations regarding anti-corruption practices. In support of ESG principles, Vendor agrees that it has established, or will establish, policies and procedures addressing its ESG and sustainability practices, including, but not limited to, minimizing the environmental impact of its business practices. Similarly, in connection with its compliance with anti-corruption Laws, Vendor agrees that it has established, or will establish, policies and procedures related to anti-corruption practices. Upon Facility's reasonable request, Vendor shall provide Facility with a copy of such policies and procedures and otherwise respond to Facility's inquiries regarding its ESG and sustainability practices and requests for verification of compliance. To the extent applicable, Vendor further agrees to reasonably assist Facility in quantifying, tracking, aggregating and verifying data related to Facility's use of Vendor's Products and/or Services as it relates to ESG principles.

- b) Vendor agrees to comply with all applicable federal, international, state and local laws and regulations related to the prohibition of human trafficking and forced labor, including, but not limited to, the Trafficking Victims Protection Act of 2000 and any applicable International Labor Organization standards regarding the same. Vendor shall not (i) engage in or support any form of human trafficking, forced labor, or involuntary servitude; (ii) utilize misleading or fraudulent practices during its recruitment or employment processes; (iii) charge recruitment fees or related costs (as defined by the Federal Acquisition Regulation) to its employees or potential employees; (iv) destroy, conceal, confiscate, or otherwise deny access to an employee's identification or immigration documents; (v) to the extent Vendor utilizes written employment agreements, fail to provide employees with a written employment agreement containing a detailed description of the terms and conditions of employment in a language the employee understands, or (vi) utilize any employment recruitment agencies or other subcontractors that engage in the foregoing. Vendor warrants and represents that, to the best of its knowledge, neither Vendor nor its agents or subcontractors are engaged in human trafficking or forced labor activity. Vendor agrees to notify Facility immediately if it is in any breach of this Section. In the event of any breach of this Section, Vendor agrees (A) that Facility may terminate this Agreement upon written notice to Vendor without penalty; and (B) to defend, indemnify, and hold the Indemnitees harmless from any Claims asserted against the Indemnitees by third parties, or suffered by the Indemnitees related thereto, that result from such breach.
20. **Product Recall.** If any Product is recalled, whether voluntarily or as required by a governmental agency, then Vendor shall (a) implement the recall in accordance with Laws and government directives, and notify Facility; (b) reimburse Facility for their reasonable costs of patient notification, returning or disposing of the recalled Product; and (c) at its option, either provide no-cost replacement Product or credit or reimburse Facility at the current contracted price for any recalled Product that is not replaced.
21. **Assignment.** Vendor may not assign or otherwise transfer this Agreement or any of its rights or obligations hereunder. Facility may assign or otherwise transfer this Agreement and/or any of its rights or obligations hereunder in its sole discretion at any time without notice to Vendor. If any person or entity unaffiliated with Vendor acquires control of Vendor, directly or indirectly, in a single transaction or series of related transactions, or acquires all or substantially all of the Vendor's assets at any time, the parties may terminate this Agreement within thirty (30) days following the closing of the acquisition, by giving at least thirty (30) days' prior written notice designating the termination date. In the event Facility agrees to waive the requirements of this Section 21 and allow Vendor to assign its obligations under this Agreement, Vendor shall delete or destroy all Facility data and Confidential Information that remains in its possession and provide Facility with a certification from an officer confirming the same.
22. **Ownership Interest.** Vendor further represents and warrants that no physician (as the term physician is defined at 42 U.S.C. § 1395x(r)) who is or may be a referral source to Facility nor any "immediate family member" of a physician owns or holds an "ownership or investment interest" in Vendor. For purposes of the preceding sentence, the term "immediately family member" shall have the meaning described in 42 C.F.R. § 411.351 and the term "ownership or investment interest" shall have the meaning described in 42 U.S.C. § 1395nn(a)(2).
23. **Data Ownership and Use.** Notwithstanding anything to the contrary herein, Facility (or its licensors, to the extent applicable) shall be and remain the sole and exclusive owner of all right, title and interest in and to any data or other information provided to Vendor, or accessed from Facility by Vendor, in connection with this Agreement in

any manner, including, but not limited, any compilations, aggregations or derivations of such data or information prepared by Vendor. Vendor may only utilize and access such data or information solely for the purposes of providing the Services and/or Products under this Agreement. Vendor may not use such data or information for any other purposes whatsoever, including, but not limited to, data aggregation, benchmarking, aiding in Artificial Intelligence machine learning, or creating derivative information. Upon the expiration or earlier termination of this Agreement, Vendor shall promptly return all Facility data and information to Facility or, upon Facility's approval, permanently delete and/or destroy such data. Vendor shall provide Facility with written certification of such return or destruction upon Facility's request. This provision shall survive expiration or termination of this Agreement for any reason. For purposes of this Agreement, "Artificial Intelligence" means a branch of computer science that uses data processing systems that perform functions normally associated with human intelligence, such as reasoning, learning, and self-improvement, or the capability of a device to perform functions that are normally associated with human intelligence such as reasoning, learning and self-improvement. This definition considers machine learning to be a subset of artificial intelligence.

24. **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.
25. **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 sent by overnight delivery service, commercial courier, hand delivery, or certified mail, return receipt requested, addressed as set forth on the signature page of this Agreement.
26. **Governing Law.** This Agreement shall be construed in accordance with the laws of the state in which Facility is located. Without abrogating the arbitration requirements of this Agreement, any action for injunctive or equitable relief shall be brought exclusively in the state or federal court with jurisdiction over the County in which Facility is located.
27. **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.
28. **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.
29. **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.
30. **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the matters covered by this 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, proposal or other documentation that conflict with, differ from or that are not expressly included in the provisions of this Agreement are rejected by the parties and shall be of no force or effect. Any provision of this Agreement which, based upon its nature, should be reasonably understood to survive expiration or termination of this Agreement shall survive the same.

31. **Conflicts.** This Agreement sets forth the terms and conditions that shall apply to the Services and/or Products provided to Facility by Vendor during the Term. Service and Product 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, specifications 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.
32. **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.

The parties have executed this Agreement as of the date set forth in their respective signature block. This Agreement is finalized on the date of the last signature.

FACILITY

By: _____

Its: CEO/CFO/Director

Date: _____

Address: _____

VENDOR

By: _____

Its: Superintendent

Date: _____

Address: 200 Glass Avenue

Hopkinsville, KY.42240

EXHIBIT A

SERVICES/PRODUCTS

Vendor shall provide the following Services and/or Products under this Agreement:

[SERVICE AND/OR PRODUCT 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 and its employees, its subcontractors and its independent contractors and agents:

- I. Commercial General Liability insurance coverage, naming Facility as Additional Insured for ongoing and completed operations (CG2010 & CG2037 or equivalent endorsements), on a primary and noncontributory basis (CG2001 or equivalent endorsement) with a minimum of One Million Dollars (\$1,000,000.00) Each Occurrence, Two Million Dollars (\$2,000,000.00) in the Annual Aggregate and Two Million Dollars (\$2,000,000.00) Products and Completed Operations 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. Vendor agrees to waive its right of subrogation.
- II. 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 products or services provided by Vendor, Vendor shall carry the following additional insurance coverage (*check all that apply*): -

- ☒ Professional (E&O) Liability insurance coverage, with a minimum of One Million Dollars (\$1,000,000.00) Each Claim and Three Million Dollars (\$3,000,000.00) Annual Aggregate, applying to professional acts and omissions.
- ☒ Commercial Auto Liability insurance covering all owned, hired, and non-owned vehicles with a minimum of One Million Dollars (\$1,000,000.00) Combined Single Limit for bodily injury and property damage, naming Facility as an Additional Insured. Vendor agrees to waive its right of subrogation.
- ☐ Cyber and Privacy/Technology E&O 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) in the annual aggregate.
- ☒ Commercial Umbrella or Excess Liability insurance coverage on a follow form basis with a minimum of Five Million Dollars (\$5,000,000.00) Each Occurrence and Five Million Dollars (\$5,000,000.00) Annual Aggregate.
- ☒ Other (specify type(s) and amount(s) of coverage):
 - Sexual Abuse and Molestation Liability coverage with a minimum of One Million Dollars (\$1,000,000.00) each occurrence and Two Million Dollars (\$2,000,000.00) annual aggregate.

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 cost 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 SECTION.

EXHIBIT D

BUSINESS ASSOCIATE AGREEMENT ADDENDUM

This Business Associate Agreement Addendum ("BAA") is entered into and incorporated as an exhibit to the underlying agreement ("Services Agreement") between Facility ("Covered Entity") and Vendor ("Business Associate") (each a "Party" and collectively "Parties").

RECITALS

WHEREAS, Business Associate performs certain services and/or provides certain products ("Services") pursuant to the Services Agreement that requires Business Associate to create, receive, maintain, or transmit Protected Health Information (PHI) on behalf of Covered Entity; and

WHEREAS, the Parties desire to enter into this BAA to comply with the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act and their implementing regulations, as amended and as currently in effect (collectively "HIPAA").

NOW, THEREFORE, the Parties agree as follows:

1. **Definitions.** Capitalized terms used but not otherwise defined in this BAA shall have the same meaning as is ascribed to those terms in HIPAA.
 - 1.1 **Administrative, Physical, and Technical Safeguards.** Measures taken in compliance with 45 C.F.R. §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 and other applicable privacy and security laws.
 - 1.2 **Breach.** When capitalized, "Breach" has the same meaning set forth at 45 C.F.R. §164.402; when not capitalized, "breach" shall have its ordinary contract meaning.
 - 1.3 **Discovery or Discovered.** A Breach is treated as Discovered by Business Associate as of the first day on which such Breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. Business Associate shall be deemed to have knowledge of a Breach if the Breach is known, or by exercising reasonable diligence, would have been known, to any person, other than the person that committed the Breach, who is an employee, officer, or agent of Business Associate. Agency is determined in accordance with the Federal common law of agency. This definition also applies to the Discovery of a Breach by a Business Associate's Subcontractor or agent, where applicable.
 - 1.4 **Electronic Protected Health Information (ePHI).** ePHI has the same meaning set forth in HIPAA but, for purposes of this BAA, references to ePHI is limited to the ePHI that Business Associate creates, accesses, receives, or maintains on behalf of Covered Entity pursuant to its role as a Business Associate under the terms of the Services Agreement.
 - 1.5 **Part 2.** This term refers to the Confidentiality of Substance Use Disorder Patient Records law and its implementing regulations set forth at 42 U.S.C. §290dd-2 and 42 C.F.R. Part 2.
 - 1.6 **Protected Health Information (PHI).** PHI has the same meaning set forth in HIPAA but, for purposes of this BAA, references to PHI are limited to PHI that Business Associate creates, accesses, receives, or maintains on behalf of Covered Entity pursuant to its role as a Business Associate under the terms of the Services Agreement. The term PHI includes ePHI.

- 1.7 Qualified Service Organization (QSO).** 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 that has entered into an agreement to perform those services for the Part 2 program.
- 1.8 Tracking Technology.** Any tracking technology utilized by Business Associate including, but not limited to cookies, pixels, codes, fingerprinting scripts, web beacons, etc., whether collected via user authenticated web pages, unauthenticated pages, or mobile applications, as set forth in the December 1, 2022, Office for Civil Rights Bulletin on Requirements under HIPAA for Online Tracking Technologies to Protect the Privacy and Security of Health Information.
- 1.9 Unsuccessful Security Incident.** Incident that includes, but is not limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above, so long as no such incident results in unauthorized access, Use, or Disclosure of Covered Entity's PHI.
- 2. Obligations of Business Associate.** Business Associate agrees to the following limitations and obligations with respect to its Use and Disclosure of PHI:
- 2.1 Permitted Uses and Disclosures of PHI.** Business Associate may Use and Disclose PHI as follows:
- (a) **Required by Law.** Business Associate must Use and Disclose PHI as Required by Law.
 - (b) **Services Agreement.** Business Associate may Use and Disclose PHI as permitted to perform its Services under the Services Agreement. To the extent Business Associate is carrying out Covered Entity's obligations under HIPAA as part of its Services for Covered Entity, Business Associate agrees to comply with the requirements of HIPAA in its performance of such obligations to the same extent they apply to Covered Entity.
 - (c) **Management, Administration and Legal Responsibilities.** Business Associate may Use and Disclose PHI for the proper management and administration of its business and to carry out the Business Associate's Service-related legal responsibilities, provided such Uses and Disclosures are permitted by HIPAA.
 - (d) **Data Aggregation.** Business Associate may Use and Disclose PHI to provide Data Aggregation services relating to the Health Care Operations of Covered Entity where such Data Aggregation services are required for Business Associate to perform its Services under the terms of the Services Agreement.
 - (e) **De-Identification.** Business Associate may Use and Disclose PHI to create de-identified information consistent with the standards set forth in 45 C.F.R. §164.514 where such de-identification is required for Business Associate to perform its Services under the terms of the Services Agreement.
 - (f) **Minimum Necessary.** Business Associate shall only request, Use, and Disclose the minimum amount of PHI necessary to perform its Services under the terms of the Services Agreement.
- 2.2 Prohibited Uses and Disclosures of PHI.**
- (a) **In Violation of Law.** Business Associate may not Use or Disclose PHI in a manner that would violate HIPAA if done by the Covered Entity itself.
 - (b) **In Violation of this BAA.** Except as Required by Law, Business Associate shall not Use or Disclose PHI other than as permitted or required by the BAA and the Services Agreement.

- (c) **Underwriting.** To the extent applicable, Business Associate shall not Use or Disclose PHI that is genetic information for underwriting purposes as set out in 45 C.F.R. §164.502(a)(5)(i).
- (d) **Sale of PHI.** Business Associate shall not sell PHI as proscribed by 45 C.F.R. §164.502(a)(5)(iii).
- (e) **Marketing.** Business Associate shall not Use or Disclose PHI in connection with any Marketing as defined in 45 C.F.R. §164.501.
- (f) **Tracking Technology.** In the event Business Associate utilizes Tracking Technology with respect to its Services, Business Associate is prohibited from Using or Disclosing any such data resulting from the Tracking Technology for purposes other than as delineated in the Services Agreement. For the avoidance of doubt, this BAA prohibits Business Associate's Use of PHI or other data obtained from utilizing such Tracking Technology for its own use and/or benefit.

2.3 Safeguard Data. Business Associate shall use reasonable and appropriate Administrative, Physical, and Technical Safeguards to prevent Use or Disclosure of PHI other than as provided for by this BAA and the Services Agreement.

2.4 Incident Reporting.

- (a) **Incident Notification Requirements.** Except in instances where law enforcement has demanded that Business Associate delay notification of an Incident pursuant to the requirements of 45 C.F.R. §164.412, or where state law requires a shorter period of time than is permitted by this BAA, Business Associate agrees to promptly notify Covered Entity, without unreasonable delay, and in no case later than five (5) calendar days after its Discovery of any of the following incidents (collectively "Incidents"):

 - (1) Any access, Use, or Disclosure of PHI in a manner not permitted under HIPAA or this BAA.
 - (2) A Breach of Unsecured PHI.
 - (3) A successful Security Incident.

- (b) **Exception to Notice Requirements.** Parties agree that this section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents for which no additional notice to Covered Entity shall be required.
- (c) **Written Reporting Requirements.** Business Associate agrees to provide a written report to Covered Entity within five (5) calendar days after its initial notice to Covered Entity of an Incident pursuant to Section 2.4(a) above. The written report shall provide the information required by 45 C.F.R. §164.410(c) to the extent such information is known to Business Associate at the time of the report. Supplemental reports must be provided if additional information is learned by Business Associate as a result of its investigation, mitigation, or remediation of the Incident.

2.5 Duty to Mitigate. 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 exist by Business Associate of an access, Use, Disclosure, modification, or destruction of PHI by Business Associate in violation of the requirements of this BAA.

2.6 Breach Investigation and Notifications. Business Associate shall cooperate fully to assist Covered Entity in investigating an Incident, identifying individuals potentially affected by the Incident, providing information needed for Covered Entity to conduct its investigation, risk assessments, and any Breach notifications required by law. Covered Entity shall have final authority to determine whether an Incident reported to it under Section 2.4(a) above is a reportable Breach. In situations where Covered Entity has determined that a reportable Breach has occurred, Covered Entity may, in its discretion, direct Business Associate to prepare and provide any legally required state and federal notifications, at the sole cost and

expense of Business Associate, but retains the right to review and approve the content and manner of any notifications made on its behalf to impacted Individuals, state and federal regulatory agencies, the media, credit monitoring agencies, or other third parties for whom notification is legally required.

- 2.7 Costs of Breach.** To the extent the Breach resulted from the acts or omissions of Business Associate or its Subcontractors or agents, Business Associate shall be responsible for all costs and expenses reasonably incurred by Covered Entity and/or Business Associate as a result of the Breach, including without limitation, the costs of notifying Individuals of the Breach, costs of providing credit monitoring, credit restoration, and identity theft protection to impacted Individuals, the costs of call-centers, substitute and media notifications, and costs incurred by Covered Entity to investigate, mitigate, remediate and defend itself against claims, actions, and investigations resulting from the Breach. Nothing in this section shall limit any other rights or remedies of Covered Entity.
- 2.8 Requests for Access.** To the extent Business Associate maintains a Designated Record Set on behalf of the Covered Entity, Business Associate shall, within fifteen (15) calendar days of its receipt of a written request from Covered Entity, make available to Covered Entity the PHI needed for Covered Entity to comply with an Individual's request for access to their PHI pursuant to 45 C.F.R. §164.524. If Business Associate receives a request for access to PHI directly from the Individual, Business Associate shall forward the request for access to Covered Entity within fifteen (15) calendar days of its receipt of the written request from the Individual.
- 2.9 Requests for Amendments.** To the extent Business Associate maintains a Designated Record Set on behalf of the Covered Entity, Business Associate shall, within fifteen (15) calendar days of its receipt of a written request from Covered Entity, make available to Covered Entity the information needed in order for Covered Entity to make an amendment to the Individual's Designated Record Set and/or incorporate such amendment(s) of PHI into the Designated Record Set pursuant to 45 C.F.R. §164.526. If Business Associate receives a request for amendment to PHI directly from the Individual, Business Associate shall forward the request for amendment to Covered Entity within fifteen (15) calendar days of its receipt of the written request from the Individual.
- 2.10 Requests for Accounting of Disclosures.** To the extent Business Associates has Disclosed any PHI it has received from Covered Entity, and to the extent such Disclosure must be accounted for pursuant to 45 C.F.R. §164.528, Business Associate shall make available to Covered Entity, within fifteen (15) calendar days of its receipt of a written request from Covered Entity, the information in Business Associate's possession that is required for the Covered Entity to comply with an Individual's request for an accounting of Disclosures of their PHI pursuant to 45 C.F.R. §164.528. If Business Associate receives a request for an accounting of Disclosures of PHI directly from the Individual, Business Associate shall forward the request for accounting to Covered Entity within fifteen (15) calendar days of its receipt of the written request from the Individual.
- 2.11 Offshoring PHI.** Without the express written consent from Covered Entity, Business Associate, shall not transmit any PHI to itself or any other entity or individual, or store PHI, outside of the United States. Business Associate shall be permitted to remotely access PHI located within the United States from offshore locations using Virtual Privacy Network (VPN) access approved by Covered Entity.
- 2.12 Subcontractors and Agents.** Business Associate may Disclose PHI to a Subcontractor or agent, and may allow the Subcontractor or agent to create, receive, maintain, or transmit PHI on its behalf, if Business Associate obtains satisfactory assurances from the Subcontractor or agent in the form of a written contract or other written arrangement that addresses the following terms:
- (a) Subcontractor or agent shall hold PHI confidentially.
 - (b) Subcontractor or agent will safeguard the PHI.
 - (c) Subcontractor or agent shall Use or Disclose the PHI only as Required by Law or for the purposes for which it was Disclosed by Business Associate to the Subcontractor or agent.
 - (d) Subcontractor or agent shall agree to the same or no less restrictive limitations and obligations with respect to the PHI that apply to Business Associate pursuant to this BAA.

- (e) Subcontractor or agent shall notify Business Associate upon its Discovery of any Incidents in accordance with Section 2.4 above.
- (f) If Business Associate knows of a pattern of activity or practice of Subcontractor or agent that constitutes a material breach or violation of Subcontractor's or agent's obligations under the terms of its written contract or other written arrangement with Business Associate, Business Associate will take reasonable steps to ensure the breach or violation is cured, and if such cure is not successful, terminate the contract or arrangement, if feasible.

Notwithstanding anything to the contrary within this BAA, Business Associate shall be and remain liable and responsible for all acts or omissions of its Subcontractors and/or agents in connection with this BAA, as if such acts or omissions were performed directly by Business Associate.

2.13 Part 2 Compliance. If, and only to the extent applicable to Business Associate, Business Associate acknowledges that if its Services under the Services Agreement require it to access, Use, Disclose, maintain, or transmit information that is protected by Part 2, Business Associate is a QSO and is fully bound by the Part 2 regulations. If necessary, Business Associate will resist in judicial proceedings any efforts to obtain access to patient records protected by Part 2 except as expressly permitted by 42 C.F.R. §§2.1-2.68. Business Associate further acknowledges that any records it receives from Covered Entity that are protected by Part 2 are subject to protections that may prohibit Business Associate from Disclosing such information to Subcontractors or agents without the specific written consent of the Individual and that any unauthorized Disclosure of information is a federal criminal offense.

3. Obligations Of Covered Entity. Covered Entity agrees to the following obligations with respect to its PHI:

- a. **Compliance with the Law.** Covered Entity shall not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under HIPAA if done by the Covered Entity.
- b. **Notice of Limitations on Use and Disclosure.** Covered Entity shall promptly provide Business Associate with written notice of any limitation(s) in its notice of privacy practices to the extent that such limitation(s) may affect Business Associate's Use or Disclosure of PHI.
- c. **Obtain Required Authorizations and Consents.** Covered Entity represents that, with regard to the PHI or Part 2 records Covered Entity has provided to Business Associate, Covered Entity has obtained the authorizations, consents, and/or other forms of legal permission required under HIPAA, Part 2, and other applicable laws, as needed to Use and Disclose the PHI.
- d. **Notice of Revocation of Authorization or Consent.** Covered Entity shall promptly provide Business Associate with written notice of any changes in, or revocation of, an authorization, consent, or permission by an Individual to Use or Disclose PHI to the extent that such revocation may affect Business Associate's Use or Disclosure of PHI.
- e. **Notice of Restrictions.** Covered Entity shall promptly provide Business Associate with written notice of any restrictions on the Use or Disclosure of PHI that Covered Entity has agreed to, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.

4. Term And Termination.

- 4.1 Term.** The term of this BAA shall be effective as of the effective date of the Services Agreement and shall terminate upon the occurrence of any of the termination provisions set forth in subsections 4.2 or 4.3 below.
- 4.2 Automatic Termination.** This BAA will automatically terminate without any further action needed by the Parties upon the termination or expiration of the Services Agreement.
- 4.3 Termination for Material Breach.** Should either Party become aware of a pattern of activity or practice of the other Party that constitutes a material breach or violation of the other Party's obligations under

this BAA, the non-breaching Party shall provide written notice of the material breach to the breaching Party, after which the breaching Party shall have thirty (30) calendar days to take reasonable steps to cure the breach or end the violation. If the non-breaching Party does not cure the breach or end the violation within thirty (30) calendar days, the non-breaching Party may terminate this BAA and the Services Agreement. If neither cure nor termination is feasible, the non-breaching Party shall report the breach or violation to the Secretary. Covered Entity reserves the absolute right to suspend Business Associate's access to PHI in the event Covered Entity reasonably determines that Business Associate has committed a material breach of this BAA until such breach is remedied in Covered Entity's reasonable discretion.

4.4 **Effect of Termination.** If feasible, upon termination of this BAA for any reason, Business Associate shall return or destroy all PHI received from or created or received by Business Associate on behalf of Covered Entity pursuant to the Services Agreement that the Business Associate maintains in any form. Business Associate shall not retain any copies of such PHI. If return or destruction is not feasible, Business Associate agrees to extend the protections, limitations, and restrictions contained in this BAA to such PHI and limit further Uses and Disclosures of that PHI to those purposes that make the return or destruction of the PHI infeasible.

4.5 **Survival.** The requirements of this Section shall survive the termination of this BAA.

5. Insurance and Indemnification

5.1 **Insurance.** Business Associate shall maintain, or cause to be maintained, Professional/Technology Liability insurance and Network Security & Privacy Liability insurance covering its potential liability for losses resulting or arising from its acts, errors, or omissions, in connection with its Services, as well as all costs and damages incurred or suffered by Covered Entity as a result of a Data Breach (as hereafter defined), regardless of the cause of the Data Breach (including, without limitation, Business Associate's 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 PHI was lost or compromised; (b) costs to provide credit monitoring, credit restoration, and identity theft protection services to Individuals whose information was lost or compromised; (c) costs associated with third party claims arising from the Data Breach or loss of information, including litigation costs and settlement costs; and (d) any investigation, mitigation, remediation, enforcement, or similar costs. Such insurance shall provide coverage for up to Ten Million Dollars (\$10,000,000.00). For the purposes of this Section, "Data 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) PHI in any format; (b) personally identifiable information (PII), as defined by state privacy laws; or (c) 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 PHI, PII, or confidential corporate information.

5.2 **Indemnification.** Each Party ("Indemnitor") agrees to indemnify, defend and hold harmless the other Party and its parent corporation, subsidiaries and affiliated entities, their directors, officers, agents, servants, and employees (collectively "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, reasonable 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 this BAA by Indemnitor or any Subcontractor or agent of Indemnitor. For the avoidance of doubt, Business Associate shall not be considered to be a Subcontractor of Covered Entity for the purposes of this Section 5.2.

5.3 **Liability.** Nothing herein shall limit any obligations of Business Associate to indemnify 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 insurance and indemnification requirements of this Section.

5.4 Survival. The requirements of this Section shall survive the termination of this BAA.

- 6. Notice.** All notices, requests, demands and other communications required or permitted to be given or made under this BAA shall be in writing and shall be effective upon receipt. Notice may be made by (a) personal delivery; (b) certified or registered United States mail, return receipt requested; or (c) overnight delivery service with proof of delivery. Notices shall be sent to the address below. Neither Party shall refuse delivery of any notice hereunder.

If to Covered Entity: Chief Compliance and Privacy Officer
c/o Corporate Compliance Department
367 South Gulf Road
King of Prussia, PA 19406

If to Business Associate: _____

7. Compliance Reviews and Audits

- 7.1 Business Associate's Annual Requirements.** Business Associate shall audit and monitor its compliance with the requirements of this BAA at least annually during the term of this BAA (and more frequently as needed to address operational or electronic systems changes). Business Associate shall make such audits, assessments, and related documentation available for review by Covered Entity upon Covered Entity's written request.

- 7.1 Audit Rights of Covered Entity.** Periodically, during the term of this BAA, Business Associate shall, upon Covered Entity's written request, make its internal practices, books, policies, procedures, and records relating to its Use or Disclosure of PHI available to Covered Entity, in a time and manner mutually agreed upon by the Parties, for purposes of Covered Entity's assessment of Business Associate's compliance with the terms of this BAA. In lieu of such an assessment, Business Associate may maintain SOC2 Type 2, HITRUST or ISO 27001 certification and provide its most recent certificate of compliance to Covered Entity. In situations where Covered Entity has a reasonable, good faith belief that Business Associate has caused a Breach with respect to its PHI or non-compliance with the terms of this BAA, Covered Entity may require that Business Associate have a third-party assessment conducted, at Business Associate's sole expense, of Business Associate's compliance with the terms of this BAA.

- 7.2 Cooperation with Secretary.** Business Associate shall make its internal practices, books, and records relating to the Use or Disclosure of PHI received from or created or received by Business Associate on behalf of Covered Entity available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining the Covered Entity's compliance with HIPAA. Upon receipt of a request from the Secretary, Business Associate shall notify Covered Entity of the request in writing unless such notification would be contrary to law.

- 7.3 Other Remedies.** Nothing in this Section shall limit any other rights or remedies of Covered Entity.

8. MISCELLANEOUS

- 8.1 Amendment.** The Parties mutually agree to enter into good faith negotiations to amend this BAA as needed for the Parties to comply with the requirements of HIPAA. All agreed upon amendments must be in writing and executed by both parties. Notwithstanding the foregoing, any changes as required by law shall not require the written consent of Business Associate to amend the provisions of this BAA.

- 8.2 Choice of Law.** To the extent not preempted by federal law, this BAA shall be governed and construed in accordance with the choice of law provision governing the Services Agreement.

- 8.3 Coordination of Documents.** In the event of a conflict between a provision of this BAA and a provision of a Services Agreement, the provision of this BAA shall control.
- 8.4 Disclaimer.** Covered Entity makes no warranty or representation that compliance by Business Associate with this BAA or the statutes and regulations cited herein will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for adequately safeguarding PHI in accordance with applicable law.
- 8.5 Independent Contractor.** The Parties to this BAA are independent contractors in performing the duties and obligations of this BAA. This BAA is not intended, and shall not be construed, to create an agency or any relationship between the Parties that would allow one Party to exercise direction or control over the manner or method by which the other Party performs Services, duties, or obligations under this BAA or the Services Agreement.
- 8.6 Interpretation.** Any ambiguity in this BAA shall be resolved to permit Covered Entity and Business Associate to comply with HIPAA, Part 2, and related state and federal statutory provisions and regulations.
- 8.7 Regulatory References.** A reference in this BAA to a section in the Code of Federal Regulations ("C.F.R.") means the section as in effect as of the effective date of this BAA, or as thereafter amended.
- 8.8 Survival.** For as long as Business Associate possesses, maintains, or has access to Covered Entity's PHI as a result of the Services Agreement, the respective rights and obligations of each Party with respect to its protection and safeguarding of the PHI shall survive the termination of this BAA.