

ALLIANCE OF LONG ISLAND AGENCIES, INC.
DIRECT PROGRAM STAFF LEASING CLEARINGHOUSE
TERMS AND CONDITIONS

The Alliance of Long Island Agencies, Inc. (the “Alliance”) has established the Direct Care Staff Leasing Clearinghouse (“Clearinghouse”) to permit Alliance member agencies (“Members”) to communicate with other Members regarding the need for or availability of day program staffing to assist other providers operating OPWDD residential programs. Members may enroll in the Clearinghouse to request staff or offer staff for leasing.

WHEREAS, Members provide programs and services for individuals with intellectual and developmental disabilities that are licensed and/or certified by the New York State Office for People with Developmental Disabilities (“OPWDD”), including residential and day programs;

WHEREAS, on March 7, 2020, the State of New York declared a public health emergency in connection with the COVID-19 crisis (the “Public Health Emergency”);

WHEREAS, due to the Public Health Emergency, OPWDD mandated the closure of all day habilitation programs as of March 18, 2020, and has, effective April 16, 2020, instituted the Day Service Retainer Program (the “Program”) that will provide funding to providers of day programs to enable such providers to continue to pay the salaries and benefits of day program staff (the “Staff”) and redeploy such Staff to OPWDD certified residential programs during the Public Health Emergency;

WHEREAS, the Program requires providers that participate in the Program to enter into agreements to make staff leasing arrangements in order to redeploy Staff to residential providers or emergency “step-down” intensive respite facilities during the period of closure of day habilitation programs;

WHEREAS, the Members desire to engage in discussions regarding the need for and/or availability of Staff; and

WHEREAS, one or more Members may desire to enter into a separate agreement to lease the use of any Staff who are being redeployed due to the Public Health Emergency.

The following terms and conditions shall apply to all Members that enroll in the Clearinghouse:

1. Members shall enroll in the Clearinghouse by completing the Enrollment Form annexed hereto as Schedule A and providing a copy of same to Alliance personnel at khousley@moritthock.com. By enrolling in this Clearinghouse, Members are hereby complying with the requirements of the Program to enter into a collaborative agreement to facilitate the redeployment of Staff, as required by the Program.

2. The Members hereby intend to and agree to collaboratively communicate, disseminate and share information regarding the need for and availability of Staff who are

available for re-deployment due to the Public Health Emergency, as required by the Program. If a Member is seeking Staff to lease in connection with the operation of its own programs, the Member will send an email to designated Alliance personnel and a request for Staff will be disseminated to other Members participating in the Clearinghouse. Members will also contact designated Alliance personnel regarding the availability of Staff available for leasing to other Members. The Alliance will forward all offers and requests to all Members that have enrolled in the Clearinghouse. Members will have the opportunity to review the requests and/or offers and may contact other Members individually to enter into a written employee leasing agreement in the form annexed hereto as Schedule B or in other form mutually acceptable to the parties.

3. Participation in the Clearinghouse shall not be deemed to constitute any offer, acceptance or legally binding agreement and does not create rights or obligations for or on the part of any Member other than as expressly set forth herein.

4. In connection with participation in the Clearinghouse, the Members hereunder acknowledge that each is subject to and shall comply with the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder.

5. These Terms and Conditions shall be construed under and governed by the laws of the State of New York without giving effect to the conflicts of law provisions thereof.

6. These Terms and Conditions may be amended, modified or supplemented only in writing by the Alliance.

7. These Terms and Conditions are intended solely for the benefit of the Members and it is not the intention of the Members to confer third-party beneficiary rights upon any other person or entity.

Dated: April 16, 2020

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SCHEDULE A

ALLIANCE OF LONG ISLAND AGENCIES, INC.
DIRECT CARE STAFF LEASING CLEARINGHOUSE
ENROLLMENT FORM

NAME OF AGENCY: _____

CONTACT PERSON NAME, EMAIL AND PHONE NUMBER: _____

DOES THE AGENCY PROVIDE RESIDENTIAL SERVICES: YES _____ NO _____

IF YES, PLEASE DESCRIBE: _____

DOES THE AGENCY PROVIDE DAY SERVICES: YES _____ NO _____

IF YES, PLEASE DESCRIBE: _____

ONCE COMPLETED, PLEASE RETURN THIS ENROLLMENT FORM TO:

khoulsley@moritthock.com

SCHEDULE B

EMPLOYEE LEASING AGREEMENT

THIS EMPLOYEE LEASING AGREEMENT (this "Agreement"), dated the ____ day of _____, 2020 (the "Effective Date"), is by and between _____, a New York not-for-profit corporation with offices at _____ ("Lessor"), and _____, a New York not-for-profit corporation with offices at _____ ("Lessee").

WHEREAS, Lessor provides programs and services for individuals with intellectual and developmental disabilities, including a day habilitation, day treatment and/or pre-vocational program;

WHEREAS, Lessee provides programs and services for individuals with intellectual and developmental disabilities, including residential habilitation and/or emergency housing services;

WHEREAS, the State of New York has declared a public health emergency in light of the current crisis regarding COVID-19 (the "Public Health Emergency");

WHEREAS, due to the Public Health Emergency, the New York State Office for People with Developmental Disabilities ("OPWDD") has mandated the closure of all day habilitation, day treatment and pre-vocational programs and has instituted retainer day payments ("Retainer Day Payments") in order to permit OPWDD provider agencies to continue to pay the salaries and benefits of day habilitation, day treatment or pre-vocational staff who have been redeployed to support efforts relating to the Public Health Emergency;

WHEREAS, the individuals listed in Exhibit A, annexed hereto and made a part hereof, are employed by Lessor (the "Employees");

WHEREAS, Lessee desires to lease the use of the Employees to provide residential habilitation and/or emergency housing services to Lessee's service recipients; and

WHEREAS, Lessor desires to make its Employees available to provide day habilitation and/or emergency housing services to Lessee's service recipients pursuant to this Agreement; and

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants herein contained, the parties hereby agree as follows:

1. During the Term, as defined below, Lessor shall assign to Lessee and make available Employees who will provide residential habilitation and/or emergency housing services to Lessee's service recipients (the "Services").

2. With respect to the Employees:

(a) The Employees shall not be deemed to be employees of Lessee, but shall continue to be employees of Lessor. Lessor shall have sole responsibility for the hiring and terminating of the Employees; provided, however, at any time during the Term and in Lessee's sole discretion, Lessee may direct Lessor to replace any Employee currently assigned to Lessee. The Employees shall not be eligible to participate in any benefit plan (including without limitation, retirement, health and welfare, fringe benefit, bonus, severance, equity incentive plans, or any other benefit plan, program, or policy) of Lessee, except as otherwise specifically permitted by Lessee regardless of whether the Employees are subsequently reclassified as, or deemed to be employees of Lessee by the Internal Revenue Service, any other governmental agency or authority (U.S. or otherwise), or a court, or if the Lessor is required to reclassify such individuals as employees as a result of such reclassification or determination (including any reclassification by Lessee in settlement of any claim or action relating to employment status).

(b) Notwithstanding clause (a) above, with respect to the Services, at all times during the Term, the Employees shall be under the direction and supervision of Lessee.

(c) Lessor shall have the right to determine (i) the salary, wages, and other compensation of the Employees, (ii) the amount of taxes, fees, or contributions paid to any governmental entity or program by Lessor on behalf of, or with respect to, the Employees, (iii) the eligibility of the Employees for benefits under Lessor's employee benefit plans and its personnel policies and procedures, and (iv) the amount of contributions made with respect to the participation of the Employees in any of Lessor's employee benefit plans or programs.

3. Term. The term of this Agreement shall commence on _____, 2020, and except as otherwise stated herein, shall continue in effect until terminated pursuant to this Section (the "Term"). This Agreement may be terminated by either party without cause effective at any time by giving the other party written notice at least fifteen (15) days prior to the effective date of termination.

4. Lessee and Lessor shall advise each other as to matters which come to their respective attention involving potential legal actions or regulatory enforcement activity which involve the employment of the Employees after the Effective Date, and shall promptly advise each other of legal actions or administrative proceedings which are actually commenced. Lessee and the Lessor agree to cooperate with one another in the defense of any such action or proceeding arising out of such lawsuit or administrative proceeding.

5. Payment for Services. The parties to this Agreement hereby acknowledge and understand that Lessor is currently receiving and expects to continue to receive Retainer Day Payments for all Employees during the Term of this Agreement. Therefore, Lessor shall receive no compensation in connection with the provision of the Services hereunder. Notwithstanding the foregoing, Lessee shall maintain timesheets of all Services provided pursuant to this Agreement and shall provide same to Lessor on a monthly basis during the Term. Nothing herein shall be deemed to require or prohibit Lessee from paying the Employees any additional compensation, whether in the form of additional salary, salary enhancements or bonuses, in

return for the Services. Any additional compensation provided by Lessee to the Employees during the Term of this Agreement shall in no way relieve, alter or diminish Lessor's obligations to continue to provide usual and customary compensation and benefits to the Employees during the Term of this Agreement.

6. Neither party may assign or delegate its rights, interests, obligations, or duties under this Agreement without the prior written consent of the other.

7. This Agreement shall not give the Employees any right to continued employment or to any employee benefits. Nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

8. Insurance. Prior to commencement of the Services and during the Term hereunder, Lessor shall, at its sole expense, obtain and maintain, with insurance companies rated no lower than A-:VII in the most recent edition of A.M. Best's Property-Casualty Key Rating Guide and licensed to do business in the state where the work is being performed, the insurance coverages listed below:

- (a) Workers' compensation insurance in compliance with statutory laws. Employers Liability Insurance with minimum limits of: (i) \$500,000 Each Accident; (ii) \$500,000 Disease – Each Employee; and (iii) \$500,000 Disease – Policy Limit.
- (b) An Insurance Services Office occurrence based Commercial General Liability Insurance Policy, including but not limited to contractual liability, personal injury liability, advertising injury liability and products/completed operations liability coverage with minimum limits of: (i) \$1 million Each Occurrence; (ii) \$2 million General Aggregate; and (iii) \$2 million Products/Completed Operations Aggregate. This policy shall be written on a per occurrence basis, and shall not be subject to deductibles or self-insured retentions.
- (c) Commercial Automobile Liability Insurance covering the use of all Owned, Non-owned and Hired Vehicles and subject to a Combined Single Limit applying to Bodily Injury and Property Damage of no less than \$1 million per occurrence.
- (d) Errors and Omissions Liability/Miscellaneous Professional Liability Insurance, with a minimum limit of \$1 million Each Claim.
- (e) Any other insurance required by Federal, State or Local Law.
- (f) The General Liability Policy, Commercial and Auto policies shall all be endorsed to name Lessee as additional insured. Coverage for the Additional Insured on all such policies shall apply on a primary basis irrespective of any other insurance, whether collectible or not.

Lessor shall provide evidence that it has met its insurance obligations as set forth above by (1) delivering to Lessee certificates of insurance evidencing compliance with such obligations prior to the commencement of the Services and annually thereafter, at least ten (10) days prior to the expiration of each required insurance policy, (2) forwarding a copy of a Blanket Additional Insured endorsement or other endorsement attached to the General Liability policy specifically adding Lessee as additional insured.

9. **Indemnification.** To the fullest extent permitted by law, Lessor agrees to indemnify, defend and save harmless Lessee and its affiliates, subsidiaries and divisions, and its and their respective employees, officers, directors, shareholders, agents and assigns, from and against any and all claims, demands, damages, losses, suits, judgments, liabilities, costs and expenses, including reasonable attorneys' fees, including but not limited to claims for bodily injuries, personal injuries, death, property damage, or claims for payment (including reasonable attorneys fees and costs of investigation and evaluation) incurred by Lessee which may arise out of, related to or in connection with the acts or negligence of the Employees or Lessor's delivery of the Services.

10. **Health Insurance Portability and Accountability Act.** The parties hereby acknowledge that Lessee is a Covered Entity and Lessor is a Business Associate as defined in the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder. The parties shall enter into a HIPAA Business Associate Agreement, annexed hereto and made a part hereof as Exhibit B.

11. Lessor hereby warrants and represents that it is an approved contractor with respect to the New York State Office for People with Developmental Disabilities ("OPWDD") and shall maintain its approved status during the term of this contract and any subsequent renewals. Furthermore, Lessor shall require compliance by all Employees with the provisions of Mental Hygiene Law Section 16.33 and Executive Law Section 845-b, the regulations related to criminal history record checks adopted by OPWDD in conjunction with the fingerprinting of certain individuals and the policies and procedures of OPWDD in connection therewith that are in effect during the Public Health Emergency. In particular, any Employee who has or will have regular and substantial unsupervised or unrestricted physical contact with people receiving services (such contact hereinafter referred to as "consumer contact") and who hereinafter submits and application for employment, or otherwise becomes affiliated, with Lessor on or after the Effective Date of this Agreement shall be required to consent and submit to a criminal history record check. Upon the completion thereof, Lessor shall deny or hold in absence employment of the Employee where his/her duties include consumer contact when directed to do so by Lessee and in those instances Lessor shall notify Employee that his/her criminal history record information is the basis for such action. Failure by Lessor to comply hereunder shall be a default hereunder and shall be a reason for immediate termination of the Agreement.

12. This Agreement shall be construed under and governed by the laws of the State of New York without giving effect to the conflicts of law provisions thereof.

13. This Agreement may not be amended, modified, supplemented or terminated except under the execution and delivery of a written agreement executed by the parties thereto. The provisions of Section 5 (with regard to payment of fees) shall survive the termination of this Agreement.

14. Any of the terms or conditions of this Agreement which may be lawfully waived may be waived in writing at any time by the party which is entitled to the benefits thereof. Any waiver of any of the provisions of this Agreement by any party hereto shall be binding only if set forth in an instrument in writing signed on behalf of such party. No failure to enforce any provision of this Agreement shall be deemed to or shall constitute a waiver of such provision and no waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

15. The terms and provisions of this Agreement are intended solely for the benefit of Lessee and the Lessor and it is not the intention of the parties to confer third-party beneficiary rights upon any other person or entity. The Employees, beneficiaries or dependents of the Employees, or other person, shall not be regarded for any purpose as a third-party beneficiary of this Agreement.

16. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof. There are no restrictions, agreements, promises, covenants or undertakings other than those expressly set forth in this Agreement with respect to the subject matter hereof. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

17. If any one or more of the provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected thereby. To the extent permitted by applicable law, each party hereto waives any provision of law that renders any provision of this Agreement invalid, illegal and unenforceable in any respect.

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

LESSOR

By _____
Name:
Its:

LESSEE

By _____
Name:
Its:

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Exhibit A

EMPLOYEES

Exhibit B

Business Associate Agreement

This BUSINESS ASSOCIATE AGREEMENT (the “Agreement”) is entered into on the _____ day of _____, 20____, by and between:

(hereinafter referred to as “Covered Entity”) and

(hereinafter referred to as “Business Associate”).

WHEREAS, Covered Entity has engaged Business Associate to perform certain services or provide certain goods, or both;

WHEREAS, Covered Entity possesses or will possess individually identifiable health information, which information is subject to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the regulations promulgated by the U.S. Department of Health and Human Services (“HHS”) thereunder and the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009 (“HITECH”);

WHEREAS, in the course of performing services or providing goods to Covered Entity, Business Associate may receive such protected health information from Covered Entity or otherwise obtain access to such information; and

WHEREAS, Covered Entity seeks to ensure that Business Associate appropriately safeguards all such protected health information.

NOW, THEREFORE, the parties hereby agree as follows:

1. DEFINITIONS

- a. “Breach” shall have the same meaning as the term breach in HITECH Section 13400(1).
- b. “HIPAA Regulations” means regulations promulgated under HIPAA by HHS, including, but not limited to, 45 C.F.R. Parts 160 and 164.
- c. “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. §160.103, limited to the information

created or received by Business Associate from or on behalf of Covered Entity.

- d. "Unsecured PHI" shall have the same meaning as the term unsecured protected health information in HITECH Section 13402(h)(1).
- e. Any terms used, but not otherwise defined, in this Agreement shall have the same meaning those terms have under HIPAA, HITECH, and the HIPAA Regulations.

2. PERMITTED USES AND DISCLOSURES

Business Associate may use and/or disclose PHI received from, or created or received on behalf of, Covered Entity to perform functions, activities or services for or on behalf of Covered Entity as set forth in a service agreement between Business Associate and Covered Entity, provided that such use or disclosure would not violate HIPAA, HITECH or the HIPAA Regulations if done by Covered Entity or the minimum necessary policies and procedures of Covered Entity.

3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a. Use or Disclosure. Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement or as required by law. Business Associate shall comply with all provisions of HIPAA, HITECH, and the HIPAA Regulations that relate to the privacy and security of PHI and that are applicable to Covered Entity and Business Associate.
- b. Safeguards. Business Associate shall use appropriate safeguards to prevent use or disclosure of PHI other than as specifically provided for by this Agreement, including, without limitation, (i) implementing administrative, physical and technical safeguards to reasonably protect the privacy and security of PHI; and (ii) ensuring that any subcontractor or agent that receives PHI from Business Associate agrees to implement reasonable and appropriate safeguards to protect the privacy and security of PHI.
- c. Mitigation. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Breach of Unsecured PHI or any use or disclosure of PHI by Business Associate that violates the requirements of this Agreement. Business Associate shall cooperate with and assist Covered Entity in any investigation and/or cure of a Breach of Unsecured PHI or other violation of this Agreement.
- d. Reporting. Business Associate shall report to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, as soon as reasonably practicable.
- e. Subcontractors and Agents. Business Associate shall ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same

restrictions and conditions that apply to Business Associate as a result of this Agreement.

- f. Access. At the request of Covered Entity, Business Associate shall provide to Covered Entity (or to an individual) access to PHI contained in a designated record set in order to comply with the access provisions contained in 45 C.F.R. §164.524 and/or the policies of Covered Entity. Such access shall be provided by Business Associate in the time and manner designated by Covered Entity, including, where applicable, access by electronic means pursuant to HITECH Section 13405(e).
- g. Amendment. At the request of Covered Entity or an individual, Business Associate shall make any amendment(s) to PHI in a designated record set that the Covered Entity directs or agrees to pursuant to the amendment of records provisions in 45 C.F.R. §164.526 and/or the policies of Covered Entity. Such amendments shall be made by Business Associate in the time and manner designated by Covered Entity.
- h. Audit and Inspection. Business Associate shall make 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 Covered Entity or to the Secretary of HHS, or his or her designee, for the purposes of the Secretary determining Covered Entity's compliance with HIPAA. Such information shall be made available in a time and manner designated by Covered Entity or the Secretary of HHS.
- i. Documentation of Disclosures. Business Associate shall document such disclosures of PHI, and such information related to such disclosures in order to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528, the policies of Covered Entity and HITECH Section 13405(c).
- j. Accounting. Business Associate shall provide to Covered Entity or to an individual information collected in accordance with Section 3(i) of this Agreement, 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 and HITECH Section 13405(c).
- k. Breach Notification. In the event of a Breach of Unsecured PHI maintained by Business Associate, Business Associate shall notify Covered Entity of such Breach, without unreasonable delay and no later than 60 days from the date of discovery of the Breach. Said notice shall be written in plain language and shall include (i) the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate, to have been accessed, acquired or disclosed; (ii) a brief description of what happened, the date of the Breach, if known, and the date of discovery; (iii) the type of personal health information

involved in the Breach; (iv) any precautionary steps to be taken; (v) a description of what Business Associate is doing to investigate and mitigate the Breach and prevent future breaches; and (vi) how affected individuals may contact Business Associate to ask questions or learn additional information.

4. OBLIGATIONS OF COVERED ENTITY

- a. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA, HITECH, or the HIPAA Regulations if done by Covered Entity.
- b. Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- c. 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.
- d. 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.

5. TERM AND TERMINATION

- a. Term. The term of this Agreement shall begin on the date first written above and shall continue until the Agreement is terminated in accordance with the provisions of Section 5(b) or 5(c) hereof, or when the underlying service agreement between the parties terminates.
- b. Termination by Covered Entity for Cause. Upon Covered Entity's knowledge of a material breach of the terms of this Agreement by Business Associate, Covered Entity may, in its sole discretion, either (i) provide Business Associate with notice of and an opportunity to cure such breach and then terminate this Agreement if Business Associate does not cure breach or end the violation within time period specified by Covered Entity, or (ii) terminate this Agreement immediately. If neither cure of the breach nor termination of the Agreement is feasible, Covered Entity shall notify HHS of the uncured breach.
- c. Termination by Business Associate for Cause. Upon Business Associate's knowledge of a material breach of the terms of this Agreement by Covered Entity, Business Associate shall provide Covered Entity with notice of and an opportunity to cure such breach and then terminate this Agreement if Covered Entity does not cure breach or end the violation within a time period specified by Covered Entity. If neither cure of the breach nor termination of the Agreement is

feasible, Business Associate shall notify HHS of the uncured breach.

d. Effect of Termination.

- (1) Upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
- (2) Notwithstanding the foregoing, in the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make the return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

6. MISCELLANEOUS

- a. Regulatory References. A reference in this Agreement to a section of HIPAA, HITECH, or the HIPAA Regulations means the section in effect or as amended.
- b. Amendment. The parties agree to take such action necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of any applicable statute, rule or regulation.
- c. Survival. The respective rights and obligations of the parties hereto under Section 5(d)(1) and 5(d)(2) of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with any applicable statute, rule or regulation.
- e. State Law. Nothing in this Agreement shall be construed to require Business Associate to use or disclose PHI without written authorization from the individual who is the subject of the PHI, or written authorization from any other person, where state law requires authorization for such use or disclosure.
- f. Injunctions. Covered Entity and Business Associate agree that any violation by Business Associate of any of the provisions of this Agreement may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law, in equity or under this Agreement,

Covered Entity shall be entitled to an injunction or other decree of specific performance with respect to any violation by Business Associate of any of the provisions of this Agreement, or any explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.

- g. Indemnification. Business Associate shall indemnify, hold harmless and defend Covered Entity from and against any and all claims, losses, liabilities, costs and other expenses resulting from or relating to the acts or omissions of Business Associate in connection with the representations, duties and obligations of Business Associate under this Agreement.
- h. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Covered Entity, Business Associate and their respective successors and assigns, any rights, obligations, remedies or liabilities.
- i. To the extent that any provisions of this Agreement conflict with the provisions of any other agreement or understanding between the parties, this Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.

Name of Covered Entity

BY: _____
Signature of Authorized Representative

Name and Title

Name of Business Associate

BY: _____
Signature of Authorized Representative

Name and Title