

MEMBERSY PARTICIPATING PROVIDER AGREEMENT

THIS MEMBERSY PARTICIPATING PROVIDER AGREEMENT (“**Agreement**”) constitutes a legally binding agreement between Membersy LLC, a Texas limited liability company (“**Membersy**”), and the dental practice entity (“**Practice Entity**”) utilizing Membersy’s platform to create a Membersy Connect account (“**Account**”) for the purpose of participating in a discount dental membership plan administered by Membersy pursuant to an executed plan administration agreement (“**Plan Administration Agreement**”). By signing below, the user creating the Account and executing this Agreement expressly warrants (i) his or her authority to enter into this Agreement on behalf of the Practice Entity, and (ii) that this Agreement is a valid and binding obligation enforceable in accordance with its terms. Practice Entity and Company are each a “**Party**” and are collectively referred to herein as the “**Parties**”.

WHEREAS, Membersy designs, develops, administers, and owns discount health care programs that provide plan members with access to discounted pricing for dental services rendered by contracted dental providers;

WHEREAS, Practice Entity owns and operates one or more dental practice locations and employs and/or contracts with licensed dental providers for the purpose of providing dental services to patients;

WHEREAS, the Parties now seek to enter into an agreement pursuant to which Practice Entity and its employed and contracted dental providers shall participate as providers in one or more discount dental membership plans administered by Membersy and will provide dental services at a discounted rate to plan members in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions referenced and exchanged herein, the sufficiency and receipt of which are hereby acknowledged, the Parties hereto, intending to be legally bound, covenant and agree as follows:

1. DEFINITIONS.

- a. **Dental Services:** Dental services rendered by a Provider to a Member.
- b. **Discount Health Care Program:** An arrangement in which an entity offers individuals access to discounts on medical services in exchange for fees, not including an insurance policy, certificate of coverage or other product that is otherwise regulated by state insurance departments. A “discount health care program” may also be referred to as a “discount medical program”, “health discount plan”, or similar term under applicable state law.
- c. **Fee Schedule:** The schedule of applicable fees to be charged to Members by Practice Entity for Dental Services rendered under a specific Plan. Fee Schedule shall be available on the Plan Website and Membersy Connect and may be amended from time to time by Membersy in accordance with the terms of the Plan Administration Agreement.
- d. **Member:** An individual enrolled in Plan.
- e. **Membersy Connect:** A web-based administrative dashboard and ecommerce platform allowing Practice Entity and Providers to (i) access real-time plan metrics and reporting, (ii) enroll, manage and verify eligibility of Members, and (iii) view Plan documents and information. Use of Membersy Connect is subject to the Terms of Service located at <https://membersy.com/connect-tos>.
- f. **Plan:** A Discount Health Care Program designed, developed and administered by Membersy pursuant to which Providers render Dental Services to Members, then charge and collect from the Members, as payment in full for such Dental Services, no more than the amount specified in the Fee Schedule. Practice Entity and/or Providers shall be solely responsible for collection of payment for dental services from members.
- g. **Plan Website:** Branded Plan website developed and administered by Membersy.
- h. **Provider:** A licensed dental provider employed or contracted by Practice Entity who shall participate in Plan and provide professional dental services to Members in accordance with the terms of this Agreement.

2. AGREEMENT TERM.

- a. Term. This Agreement shall begin on the Effective Date and shall continue thereafter until the earlier of (i) termination of the Account by either Party, (ii) expiration or termination of the underlying Plan Administration Agreement, or (iii) termination of this Agreement in accordance with this Section 2 (such period referred to herein as the “**Term**”).
- b. Termination for Breach.
 - i. If Membersy breaches any material term of this Agreement, Practice Entity shall provide Membersy with written notice of the alleged breach. If such breach has not been cured by Membersy within thirty (30) days following such notice, Practice Entity shall have the right to immediately terminate this Agreement for cause upon written notice to Membersy.
 - ii. If Practice Entity breaches any material term of this Agreement, Membersy shall have the right to immediately terminate this Agreement in conjunction with Practice Entity’s Account access.
- c. Termination upon Mutual Consent. The Parties may terminate this Agreement upon mutual written consent.
- d. Effect of Termination. The rights and obligations of the Parties under Section 1 and Sections 5 through 9 shall survive expiration or termination of this Agreement.

3. PRACTICE ENTITY RESPONSIBILITIES, OBLIGATIONS, DUTIES and WARRANTIES.

- a. Authority. Practice Entity represents and warrants that it is authorized by written agreement to (i) contract on behalf of all Providers who shall participate in Plan, and (ii) ensure participation of Providers in Plan in accordance with the terms and conditions of this Agreement.
- b. Provider Contact Information. Following execution of this Agreement, Practice Entity shall furnish a list to Membersy of all Providers who will be participating in Plan, including names, email addresses, telephone numbers, office addresses, and contact information for any applicable office managers or regional managers (collectively, the “**Provider Contact Information**”). Practice Entity shall be responsible for maintaining an up-to-date list of Provider Contact Information and for providing prompt updates to such list to Membersy. Practice Entity represents, warrants and covenants that it has obtained, and will continue to obtain, all consents and has provided all notices, in each case to the extent required pursuant to applicable laws, rules and regulations to provide Provider Contact Information to Membersy for use in marketing and administering the Plans. Practice Entity shall be fully responsible for any actual or alleged violation of such laws, rule or regulations resulting from Membersy’s use of Provider Contact Information in the manner contemplated herein. Practice Entity agrees to allow Membersy to publish information regarding Practice Entity and Providers in Plan marketing materials and on the Plan Website, and to otherwise allow Members and potential Members to search for Practice Entity and Provider names, locations, and prices.
- c. Utilization Data. Upon request from Membersy, Practice Entity shall furnish to Membersy, at least quarterly, deidentified dental care utilization data from participating Providers for both Members and non-Members for the purpose of analyzing Plan utilization. Practice Entity may provide Membersy with access to the practice management system (“**PMS**”) serving Practice Entity and Providers for the purpose of obtaining this data, in which case the Parties shall cooperate to facilitate such access and to minimize costs to both Parties and disruption to Practice Entity operations. All utilization data provided by Practice Entity to Membersy shall be anonymized and de-identified prior to Practice Entity providing such data to Membersy so that such data does not qualify as “protected health information,” “personal information” or like term under applicable laws, rules or regulations.
- d. Marketing Materials. Practice Entity shall not have authority or right to vary, discharge, waive or modify terms of membership, Plan brochures, or any advertising or other materials furnished by Membersy without Membersy’s written consent.
- e. No Use with Third-Party Payor Programs. Membersy and Practice Entity agree that Plan shall not be used in conjunction with any third-party payor program, including government and private third-party payor programs (e.g., Medicaid, private insurance), and Providers

shall be prohibited from enrolling any patient who is a participant in such payor program(s) where applicable laws, rules, regulations or provider agreements prohibit the Provider from offering additional discounts to such patient.

- f. Payment for Dental Services.
 - i. **Practice Entity and Providers shall accept the amount specified in the then-current Fee Schedule as payment in full for Dental Services rendered to Members at time of service, and will not charge Members more than the amount listed in the Fee Schedule for any Dental Services rendered.**
 - ii. Practice Entity and Providers shall be solely responsible for collection of payment for Dental Services from Members. Membersy shall not pay Practice Entity or Providers any fees for Dental Services. Practice Entity may, in its sole discretion, offer extended payment terms on Dental Services provided to the Member.
- g. Receipt of Membership Fees. Practice Entity and Providers shall direct all current and prospective Members to submit payment for the Membership Fees in the manner directed by Membersy. If Practice Entity receives payment for Membership Fees directly from a current or prospective Member, Practice Entity shall, unless Membersy and Practice Entity agree otherwise, promptly transfer such amount to Membersy.
- h. Dental Practice and Equipment; Licensure and Certifications; Professional Insurance.
 - i. Practice Entity represents and warrants that each Provider shall be licensed to provide dentistry in accordance with applicable state laws, and shall maintain all professional and regulatory licenses and certifications required to provide Dental Services to Members during the Term of this Agreement. Practice Entity shall notify Membersy immediately in the event of any change in licensure or certification status of any Provider.
 - ii. Practice Entity agrees to maintain all professional and regulatory licenses and certifications required to provide Dental Services to Members, and shall give a minimum of thirty (30) days' notice to Membersy of any impending material change, cancellation, or modification in licensure or certification standing.
 - iii. Practice Entity represents and warrants that (i) Practice Entity and/or Providers shall provide all services, products, equipment, staff, and billing necessary to provide Dental Services to Members, and (ii) Practice Entity and Providers shall maintain adequate professional liability and malpractice insurance coverage during the Term of this Agreement. Practice Entity and/or Provider shall be solely responsible for all taxes, licenses, permits, reports, insurance, bonds, and any other documents or actions necessary to provide Dental Services in compliance with any and all applicable federal and state laws.
 - iv. Practice Entity represents and warrants that Providers shall provide professional Dental Services to Members (i) without discrimination against any Member on the basis of participation in Plan, source of payment, age, sex, ethnicity, religion, sexual preference, health status or disability, (ii) which shall be identical in all respects to those services rendered to non-Members, and (iii) which are in accordance with all applicable laws and generally accepted and customary professional and ethical standards.
- i. Post-Termination Obligations. In order to ensure that all Members who have enrolled in Plan receive the benefit of such enrollment for the full membership term, Practice Entity represents and warrants that, upon termination or expiration of this Agreement and/or discontinuation of Plan for any reason other than loss or suspension of applicable state licensure or registration, Practice Entity and Providers shall (i) honor all existing Plan memberships that have been enrolled or renewed prior to the effective date of termination, and (ii) render Dental Services to Members and collect payment in accordance with the Fee Schedule and the terms and conditions of this Agreement until all such existing memberships have expired.

4. MEMBERSY RESPONSIBILITIES, OBLIGATIONS AND DUTIES.

- a. Membersy shall develop and maintain Membersy Connect and the Plan Website, which shall advertise, describe, and offer the Plan. Membersy Connect shall include an enrollment

- platform allowing Providers to enroll patients in Plan directly from the Provider's office.
- b. Membersy shall provide customer support services to Members, including email support and a toll-free dedicated phone number during Membersy's regular business hours, excluding observed holidays. Customer support hours and observed company holidays are subject to change at Membersy's discretion to support operational business needs.
- c. Membersy shall supply unique logins on an as-needed basis to Practice Entity and Providers to access Membersy Connect.
- d. Membersy shall provide initial and continuing training to Providers regarding Plan. Initial training shall take place promptly after Plan implementation, either in-person or online. Continued trainings shall be provided on an as-needed basis at the discretion of Membersy. Membersy shall cover all the costs associated with initial and continued Provider trainings.
- e. Membersy shall not have nor exercise any control or direction over the methods by which the Providers render Dental Services to Members. Standards of dental practice and the professional duties of Providers shall be determined in accordance with applicable provisions of law and other rules and regulations of any and all governmental authorities relating to licensure and regulation of the Providers.

5. CONFIDENTIAL INFORMATION.

- a. Confidentiality. In connection with this Agreement, either Party may disclose to the other Party certain information regarding its business affairs, products, services, technology, plans, concepts, internal processes, and documents, in each case regardless of whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). With respect to Membersy, its Confidential Information shall include all information regarding the marketing, design, and selling of Discount Health Care Programs or otherwise related to Membersy's business. Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain through no action by the receiving Party; (b) known to the receiving Party at the time of disclosure without restriction on use or disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party without use of, or reference to, the disclosing Party's Confidential Information. Neither Party shall disclose the other Party's Confidential Information to any person or entity, except to the receiving Party's employees or consultants who have a need to know the Confidential Information to exercise its rights or perform its obligations hereunder. In addition, neither Party shall use the disclosing Party's Confidential Information for any purpose other than exercising its rights and performing its obligations pursuant to this Agreement or as otherwise agreed by the disclosing Party.
- b. Feedback. If Practice Entity or any of its employees or contractors sends or transmits any communications or materials to Membersy by mail, email, telephone, or otherwise, suggesting or recommending changes to the Plan or related technology, including new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Membersy is free to use such Feedback for any and all lawful purposes.
- c. Return or Destruction. On the expiration or termination of this Agreement, each receiving Party shall cease using and permanently and irretrievably erase or destroy all of the disclosing Party's Confidential Information, whether in written, electronic, or other form or media.

6. WARRANTY DISCLAIMER. THE PLANS AND OTHER SERVICES OFFERED BY MEMBERSY ARE PROVIDED "AS IS" AND MEMBERSY HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. WITHOUT LIMITING THE FOREGOING, MEMBERSY MAKES NO WARRANTY OF ANY KIND THAT THE PLAN WILL INCREASE PATIENT VOLUME, REVENUES, PROFITABILITY OR OTHERWISE RESULT IN ECONOMIC BENEFIT TO PRACTICE ENTITY OR PROVIDERS.

7. LIMITATION OF LIABILITY.

- a. WAIVER OF CERTAIN DAMAGES. IN NO EVENT WILL MEMBERSY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (A) CONSEQUENTIAL, INCIDENTAL,

INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (B) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (C) LOSS OF GOODWILL OR REPUTATION; (D) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA; OR (E) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER MEMBERSY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE.

- b. MAXIMUM LIABILITY. IN NO EVENT WILL MEMBERSY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNT OF ADMINISTRATIVE FEES PAID TO MEMBERSY BY PRACTICE ENTITY IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

8. INDEMNIFICATION.

- a. Membersy Indemnification. Membersy shall indemnify, defend and hold harmless Practice Entity from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by Practice Entity resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that Practice Entity's permitted use of Membersy Connect infringes or misappropriates such third party's US patents, copyrights, or trade secrets, provided that Practice Entity promptly notifies Membersy in writing of the claim, cooperates with Membersy, and allows Membersy sole authority to control the defense and settlement of such claim. If such a claim is made or appears possible, Practice Entity agrees to permit Membersy, at Membersy's sole discretion, to (A) modify or replace Membersy Connect, or component or part thereof, to make it non-infringing, or (B) obtain the right for Practice Entity to continue to use Membersy Connect in substantially the same manner as contemplated in these Terms. If Membersy determines that neither alternative is reasonably available, Membersy may terminate Practice Entity's access to Membersy Connect and provide an alternative method for Practice Entity to access data regarding the Plan.
- b. Practice Entity Indemnification. Practice Entity shall indemnify, hold harmless and, at Membersy's option, defend Membersy from and against any Losses resulting from (i) any Third-Party Claim resulting from the provision of Dental Services by Providers associated with Practice Entity; (ii) any Third-Party Claims resulting from Practice Entity's breach of the restrictions or obligations applicable to it pursuant to this Agreement; (iii) any Third-Party Claim alleging that the use of any trademarks, logos or other creative assets of Practice Entity or the Providers by Membersy, including in connection with the Plan Website, infringes or misappropriates a third-party's intellectual property rights; or (iv) any Third-Party Claim resulting from a Provider's breach of the restrictions or obligations applicable to the Provider pursuant to this Agreement; provided, in each case that, if Membersy requests Practice Entity to assume the defense of any such Third-Party Claim, Practice Entity may not settle any Third-Party Claim against Membersy unless Membersy consents to such settlement, and; provided, further, that Membersy will have the right, at its option, to defend itself against any such Third-Party Claim at Practice Entity's expense or to participate in the defense thereof by counsel of its own choice.

9. MISCELLANEOUS TERMS.

- a. HIPAA Business Associate Addendum. In the performance of this Agreement, the Parties shall comply with the standards for privacy and security of individually identifiable health information of the Health Insurance Portability and Accountability Act of 1996, Health Information for Economic and Clinical Health Act, and the rules and regulations promulgated thereunder (including the HIPAA Omnibus regulations promulgated on January 25, 2013), all as the same may be amended from time to time (collectively, "HIPAA"), as well as other applicable state and federal laws and regulations protecting individually identifiable health information, as fully set forth in the Business Associate Addendum attached hereto as Exhibit "A" and incorporated herein by reference.
- b. Nature of Relationship. This Agreement does not create an agency or employment

relationship, partnership, or joint venture between Practice Entity and Membersy for any purpose. The Parties acknowledge and agree that each Party is an independent contractor and, as such, is solely responsible for its acts and omissions and the consequences thereof, and is fully able and capable of assessing any risks involved in undertaking the obligations required by this Agreement. Neither Party shall have the authority to bind the other Party to any contract or other obligation.

- c. Amendment; Waiver. Except as provided herein, this Agreement may only be modified, amended, or changed by an agreement in writing signed by the Parties. **Notwithstanding the foregoing, Membersy may update this Agreement from time to time, and such updated Agreement will apply to any new Order entered into following such update.** No waiver by either Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in these Terms, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these Terms will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- d. Severability. If any court determines that any portion of this Agreement is unenforceable, it shall be deleted from this Agreement and the Agreement shall otherwise remain in effect. If any Applicable Law comes into effect following the Effective Date that increases or otherwise changes the Parties' compliance obligations with respect to the Plan and Plan-related services provided hereunder, the Parties shall negotiate in good faith to amend this Agreement as required to comply with such Applicable Law. If this Agreement cannot be amended in a manner that is reasonably sufficient to comply with such Applicable Law or if the Parties are unable, despite using good faith efforts, to mutually agree on an amendment to this Agreement, then either Party may terminate this Agreement immediately upon written notice to the other Party.
- e. Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the transactions contemplated herein, and any prior or contemporaneous oral or written negotiations, representations or agreements of the Parties are merged herein and may not be used to vary or contradict the terms and provisions hereof.
- f. Beta Services. From time to time, Membersy may, in its sole discretion, invite you to use, on a trial basis, pre-release or beta features that are in development and not yet available to all customers ("**Beta Services**"). Beta Services may be subject to additional terms and conditions, which Membersy will provide to you prior to your use of the Beta Services. Such Beta Services and all associated conversations and materials relating thereto will be considered Membersy Confidential Information and subject to the confidentiality provisions in this Agreement. Practice Entity agrees that it will not make any public statements or otherwise disclose its participation in the Beta Services without Membersy's prior written consent. Membersy makes no representations or warranties that the Beta Services will function. Membersy may discontinue the Beta Services at any time in its sole discretion, with or without notice to Practice Entity. Membersy will have no liability for any harm or damage arising out of or in connection with a Beta Service. The Beta Services may not work in the same way as a final version. Membersy may change or not release a final or commercial version of a Beta Service in our sole discretion.
- g. Force Majeure. Neither Party shall be liable or responsible to the other for delays or failures in performance resulting from acts, causes, circumstances or events beyond its reasonable control, including acts of nature and natural disasters, inclement weather, governmental actions, fire, flood, pandemic or other public health crisis, including quarantine or other employee restrictions, labor difficulties or shortages, unavailability of material or equipment from suppliers, delays due to third party vendors, terrorism, cyber, chemical or biological attack, civil disturbances or insurrection, war, interruptions of power, supply or communications or other similar events or occurrences.
- h. Publicity. During the term of this Agreement, Membersy may include Practice Entity's name and logo in its customer lists, including on its website. To the extent Practice Entity provides standard trademark usage guidelines, Membersy shall use Practice Entity's name and logo in accordance with such guidelines.
- i. Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and

their successors and assigns. Neither Party shall assign its rights or obligations hereunder without the written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Membersy shall have the right to assign its rights and obligations under this Agreement without obtaining Practice Entity's consent to (i) any of its affiliates, (ii) any purchaser of all or substantially all of its assets or the portion of its business to which the subject matter of this Agreement relates, or (iii) any successor entity resulting from any merger or consolidation of Membersy with or into such entity.

- j. Governing Law; Venue. This Agreement will be interpreted and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles. Any dispute arising out of, or related to, this Agreement shall be subject to the exclusive jurisdiction of the state and federal courts located in Travis County, Texas, and each Party hereby submits to the jurisdiction of such courts.
- k. Waiver of Jury Trial. To the extent permitted by applicable law, each Party waives the right to litigate any dispute arising out of, or related to, this Agreement as a class action, either as a member of a class or as a representative.
- l. Authority. Each of the Parties expressly warrants his or her authority to enter into this Agreement and to carry out its obligations as set forth herein, and that this Agreement, when executed, will be a valid and binding obligation enforceable in accordance with its terms. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement.
- m. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given when (i) personally delivered (ii) deposited in the United States mail, by registered or certified mail, return receipt requested, postage prepaid, (iii) deposited with an internationally recognized overnight courier and addressed to the other Party, or (iv) delivered via electronic mail to the address set forth below or such other address as the Party may designate in writing:

To Practice Entity:

Notice shall be sent to the address provided to Membersy by Practice Entity

To Membersy:

Membersy LLC
811 Barton Springs Road, Suite 750
Austin, TX 78704
Attention: Legal
Email: legal@membersy.com

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Agreement to be effective as of the date first above written.

PRACTICE ENTITY

By: _____

Date: _____

MEMBERSY LLC

By: _____

Date: _____

DRAFT

EXHIBIT A

BUSINESS ASSOCIATE ADDENDUM

THIS BUSINESS ASSOCIATE ADDENDUM (“**BAA**”) supplements and is made part of the Dental Membership Plan Participating Provider Agreement (hereinafter, the “**Services Agreement**”) by and between Membersy (hereinafter, the “**Business Associate**”) and Practice Entity (hereinafter, the “**Covered Entity**”) to be effective upon execution of the Services Agreement. Business Associate and Covered Entity are sometimes singularly referred to as “**Party**” and collectively as “**Parties**”.

WHEREAS, Business Associate and Covered Entity anticipate that the Services Agreement may require Business Associate to use, disclose, access, create, maintain, transmit and/or receive Protected Health Information (as defined herein) on behalf of Covered Entity; and

WHEREAS, the Parties seek to comply with the standards for privacy and security of Protected Health Information set forth in the Health Insurance Portability and Accountability Act of 1996, Health Information for Economic and Clinical Health Act, and the rules and regulations promulgated thereunder (including the HIPAA Omnibus regulations promulgated on January 25, 2013), all as the same may be amended from time to time (collectively, “**HIPAA**”), as well as other applicable state and federal laws and regulations protecting Protected Health Information.

NOW THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound, the Parties agree as follows:

A. DEFINITIONS.

Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the HIPAA Rules. The following required definitions are as set forth in 45 C.F.R. Parts 160 and 164 (the “**Privacy Rule**”):

1. “**Business Associate**” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Membersy.
2. “**Covered Entity**” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean Practice Entity.
3. “**Designated Record Set**” means: (1) A group of records maintained by or for a Covered Entity that is: (i) The medical records and billing records about Individuals maintained by or for a covered Health Care provider; (ii) The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) Used, in whole or in part, by or for the Covered Entity to make decisions about Individuals. For purposes of this paragraph, the term “record” means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for a Covered Entity.
4. “**Disclosure**” means the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.
5. “**Health Care**” means care, services, or supplies related to the health of an Individual. Health Care includes, but is not limited to, the following: (1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an Individual or that affects the structure or function of the body; and (2) Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.
6. “**Health Information**” means any information, including genetic information, whether oral or recorded in any form or medium, that: (1) is created or received by a Health Care provider, health plan, public health authority, employer, life insurer, school or university, or Health Care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an Individual; the provision of Health Care to an Individual; or the past, present, or future payment for the provision of Health Care to an Individual.
7. “**HIPAA Rules**” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
8. “**Individual**” means the person who is the subject of Protected Health Information.

9. **“Individually Identifiable Health Information”** is information that is a subset of Health Information, including demographic information collected from an Individual, and: (1) is created or received by a Health Care provider, health plan, employer, or Health Care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an Individual; the provision of Health Care to an Individual; or the past, present, or future payment for the provision of Health Care to an Individual; and (i) that identifies the Individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the Individual.
10. **“Protected Health Information”** or **“PHI”** means Individually Identifiable Health Information that is: (i) transmitted by electronic media; (ii) maintained in any medium of electronic media; or (iii) transmitted or maintained in any other form or medium. PHI shall specifically include electronic protected health information, or EPHI. PHI excludes Individually Identifiable Health Information: (i) in education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. 1232 (ii) in records described at 20 U.S.C. 1232g(a)(4)(B)(iv), (iii) in employment records held by a covered entity in its role as employer and (iv) regarding a person who has been deceased for more than 50 years.
11. **“Use”** means with respect to Individually Identifiable Health Information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

B. DUTIES AND RESPONSIBILITIES OF BUSINESS ASSOCIATE.

1. Business Associate shall use, disclose, access, create, maintain, transmit and/or receive PHI on behalf of Covered Entity only as permitted or required by applicable law, as required to perform the services under the Services Agreement or as permitted or required by the terms of this BAA.
2. Business Associate shall ensure that all disclosures of PHI by Business Associate comply with the principle of **“minimum necessary use and disclosure,”** (i.e., in accordance with 45 C.F.R. §164.502(b), only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed).
3. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except as follows:
 - a. Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - b. Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - c. Business Associate may provide data aggregation services relating to the Health Care operations of Covered Entity.
4. Business Associate shall use appropriate safeguards and shall comply with Subpart C of 45 C.F.R. Part 164 with respect to EPHI, to prevent use or disclosure of PHI other than as provided for by this BAA. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA.
5. Business Associate shall report in writing to Covered Entity without unreasonable delay, and in no event more than thirty (30) days following discovery, any use or disclosure of PHI not provided for by this BAA of which it becomes aware, including breaches of unsecured PHI as required at 45 C.F.R. § 164.410, and any security incident of which it becomes aware. Covered Entity shall be responsible for performing all required notifications with respect to any potential breach reported hereunder.
6. If Business Associate uses or contracts with any agent, including a subcontractor, that uses, discloses, accesses, creates, receives, maintains or transmits PHI on behalf of the Business Associate, Business Associate shall require any such agent to agree in writing to the same restrictions and conditions that apply to Business Associate under this BAA.

7. To the extent that Business Associate possesses or maintains PHI in a Designated Record Set, Business Associate agrees to:
 - a. Provide Covered Entity with access to such PHI within three (3) business days of request from the Covered Entity;
 - b. Make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to in accordance with HIPAA Rules within three (3) business days of any such request; and
 - c. Notify Covered Entity within three (3) business days if Business Associate receives a request from an Individual to access or amend the Individual's PHI and cooperate with Covered Entity to permit Covered Entity to respond to such Individual.
8. Business Associate will report to Covered Entity, within thirty (30) days of a request by Covered Entity, sufficient information for Covered Entity to comply with the accounting for disclosures requirements of 45 C.F.R. § 164.528.
9. To the extent that Business Associate agrees to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
10. Business Associate shall make its internal practices, books, and records directly relating to the use and disclosure of PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity available to the Secretary of the United States Department of Health or Human Services or his or her designee ("**Secretary**"), for purposes of determining compliance with the HIPAA Rules.
11. Business Associate may disclose the PHI received by Business Associate if either:
 - a. The disclosure is required by law; or
 - b. Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

C. DUTIES AND RESPONSIBILITIES OF COVERED ENTITY.

1. Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
2. Covered Entity shall be responsible for obtaining valid authorization(s) from any and all individuals as required for the use and disclosure of PHI for all purposes of the Services Agreement and this BAA.
3. Covered Entity shall notify Business Associate of any changes to, or revocation of, the authorization of an individual regarding the use or disclosure of PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
4. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
5. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity, except as set forth in Section B.3 above.

D. GENERAL PROVISIONS

1. Indemnification. Each Party agrees to indemnify, defend and hold harmless the other Party and its officers, directors, employees and agents against any loss, claim, damage or liability if and to the extent proximately caused by the indemnifying Party's (i) violation of a material term of this BAA, (ii) violation of HIPAA, or (iii) gross negligence or willful misconduct.
2. Regulatory References. A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended.
3. Amendment. The Parties agree to take such action as may be necessary to amend this BAA to comply with the requirements of the HIPAA Rules and any other applicable law.

4. Interpretation. Any ambiguity in this BAA shall be resolved in favor of a meaning that permits Covered Entity and the Business Associate to comply with the HIPAA Rules.
5. No Waiver. The failure of any Party at any time to require performance of any provision or to resort to any remedy provided under this BAA shall in no way affect the right of that Party to require performance or to resort to a remedy at any time thereafter, nor shall the waiver by any Party of a breach be deemed to be a waiver of any subsequent breach. A waiver shall not be effective unless it is in writing and signed by the Party against whom the waiver is being enforced.
6. Notices. All notices, demands, and all other communications required or permitted to be given or made under this BAA shall be given or made in the same manner as set forth in the Services Agreement.

E. TERM/TERMINATION.

1. Term and Termination. The term of this BAA shall become effective upon execution of the Services Agreement and shall continue thereafter until the Services Agreement expires or is terminated for any reason, whereupon this BAA shall terminate automatically.
2. Termination for Cause. A breach or violation of this BAA by Business Associate shall constitute a material breach of the Services Agreement and shall provide grounds for termination of the Services Agreement as follows:
 - a. If Covered Entity knows or reasonably believes that an activity or practice of Business Associate constitutes a breach or violation of the duties and responsibilities of Business Associate under this BAA, Covered Entity shall provide written notice to Business Associate of such breach or violation. If Business Associate is unable to cure such breach or end such violation within thirty (30) days of such notice, Covered Entity may terminate the Services Agreement by providing written notice of termination to Business Associate.
3. Obligations of Business Associate Upon Termination. Upon termination of this BAA for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:
 - a. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - b. Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining PHI that the Business Associate still maintains in any form; however, if such return or destruction is not feasible, then Business Associate shall extend the protections of the BAA to such PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible;
 - c. With respect to electronic PHI, continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 to prevent use or disclosure of the PHI, other than as provided for in this section, for as long as Business Associate retains the PHI;
 - d. Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions which applied prior to termination; and
 - e. Return to Covered Entity or, if agreed to by Covered Entity, destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
4. Survival. The obligations of Business Associate set forth in Section E.3 above shall survive the termination of this BAA.