

MASTER SERVICES AGREEMENT

This **MASTER SERVICES AGREEMENT** (the “Agreement”) is effective as of January 26, 2023 (the “Effective Date”), by and among Parallel Learning Psychology P.C., a California professional corporation (“Parallel”), Parallel Learning, Inc., a Delaware corporation (“MSO”) and **Mountain View Whisman School District**, a California Public School District (“Client”) (each, a “Party”, and collectively, the “Parties”).

RECITALS

WHEREAS, Parallel is a provider of professional behavioral health and attendant administrative services as more fully set forth on Exhibit A, (“Services”) through a telehealth technology platform owned and operated by MSO to which Parallel has access through separate business support services agreement with the MSO (the “Platform”);

WHEREAS, Client desires to contract with Parallel to arrange for Parallel’s behavioral health clinician providers to provide certain Services to the Client’s students and support staff (“Users”) and Parallel desires to contract with Client to provide such services, in accordance with the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual terms, conditions and covenants contained herein, and other sound and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

Article 1

PARALLEL AND MSO SERVICES

1.1 Responsibilities of Parallel and Client in Connection with Services.

1.1.1 Parallel will deliver the Services described herein and/or in a statement of work to this Agreement that is mutually agreed upon and signed by the Parties (“SOW”), each of which is incorporated herein by reference. Parallel will provide Services through a testing team of clinical care providers, including psychometrics, psychologists, and care coordinators who are qualified to furnish the Services (each, a “Parallel Provider” and collectively, the “Parallel Providers”).

1.1.2 Each Parallel Provider shall, as applicable to such Parallel Provider’s profession, and as required by applicable law: (i) hold an unrestricted license to practice his or her profession in the applicable jurisdiction(s); (ii) possess a current and valid DEA number; (iii) have a current and valid controlled substance registration in the state(s) where he or she is licensed; and (iv) be and remain eligible to participate in federal healthcare programs, including Medicare and Medicaid.

1.1.3 The Parallel Providers shall provide Services with due care and diligence, in a competent and professional manner in accordance with generally accepted professional standards and applicable law.

1.1.4 Client shall provide Parallel and its Parallel Providers with access to all Client personnel and medical information reasonably necessary to enable Parallel and its Parallel Providers to provide Services.

1.2 Platform Services. Subject to the terms and conditions of this Agreement and the MSO’s terms of use available at <https://www.parallellearning.com/legal/terms-of-use>, which may be updated by MSO from time to time in MSO’s sole discretion, MSO shall provide PC, Client, and Users with access to the Platform in order to provide and obtain Services respectively, except during periods of scheduled maintenance, inoperability, or inaccessibility. In the event that the Platform is not available for use by Users, MSO will use commercially

reasonable efforts to correct the interruption as promptly as practicable. Client acknowledges that it is obtaining only a limited right to use, and to authorize Users to access and use, the Services on MSO's Platform. Client agrees that MSO or its suppliers retain all right, title and interest (including all patent, copyright, trade secret and other intellectual property rights) in and to the Platform, including any and all related and underlying software (including mobile applications, extensions and interfaces), databases, technology, and all copies, modifications and derivative works thereof, and all system performance data, including machine learning algorithms, data used for optimization and services improvement, and the results and output of such machine learning. MSO reserves all rights to the Platform not expressly granted in this Agreement. Client may not disclose, provide access to use, or display the Platform except as set forth in this Agreement. Client will remain responsible for all acts and omissions of its Users that have access to the Platform pursuant to this Agreement.

1.3 Compliance Matters. The Parties agree to comply with all applicable federal and state laws and regulations governing each Party's conduct hereunder, including healthcare fraud and abuse laws and laws governing the confidentiality and privacy of health and/or student information, including, without limitation, the Family Educational Rights and Privacy Act and its implementing regulations ("FERPA") and the Health Insurance Portability and Accountability Act, as amended by the Health Information Technology for Economic and Clinical Health Act, and their implementing regulations ("HIPAA").

1.3.1 **FERPA.** In providing Services under this Agreement, Parallel may have access to education records ("Records") that are defined in and subject to FERPA. To the extent that Parallel has access to Records, Parallel is deemed a "school official" and may use the Records solely for the specific "legitimate educational purposes" as defined by FERPA.

(a) Parallel agrees that it will: (i) hold Records in strict confidence and not use or disclose Records without the prior written consent of the appropriate parent, except as (A) permitted or required by this Agreement, (B) required by applicable law, or (C) otherwise authorized by Client in writing; (ii) safeguard Records according to commercially reasonable administrative, physical, and technical standards; and (iii) continually monitor its operations and take any action necessary to assure that Records are safeguarded in accordance with the terms of this Agreement.

(b) If any person seeks access to Records, Parallel will promptly inform Client of such request in writing. Parallel will not disclose any Records without the prior written authorization of an authorized representative of Client. If the request for access is pursuant to a court order or lawfully issued subpoena, Parallel will promptly provide Client with a copy of such court order or subpoena, and will comply with FERPA notification requirements to parents and/or eligible students.

1.3.2 **HIPAA.** Student records that are disclosed to Parallel by Client and maintained within the Platform are by definition "educational records" under FERPA and not "protected health information" as defined by HIPAA. Because student health information in education records is protected by FERPA, the HIPAA Privacy Rule excludes such information from its coverage.

(a) **Business Associate Agreement.** Parallel acknowledges and agrees that: to the extent Client is a "*covered entity*" (as defined in HIPAA), then, depending on the services provided pursuant to this Agreement and SOW(s), Parallel may be a "*business associate*" (as defined under HIPAA) of the Client when the Client provides services to Parallel involving "*protected health information*" (as defined under HIPAA) pursuant to this Agreement. If applicable, Parallel agrees to perform all services involving protected health information in accordance with the Business Associate Addendum Provisions, attached hereto as Exhibit B

Article 2

COMPENSATION FOR SERVICES AND BILLING

2.1 Compensation. Client shall pay Parallel compensation for Services as set forth in Exhibit A.

2.2 Payment Terms. Parallel will provide invoices to Client within five calendar days of the last day of each month of the Term in a manner as agreed by the Parties (“Invoices” and each, an “Invoice”). Each Invoice will include: (i) an accounting of evaluations and support services provided during the period of the Term covered by the Invoice, as set forth in Exhibit A; (ii) the amount due for Services rendered during the period of the Term covered by the Invoice, as set forth in Exhibit A; and (iii) the total remaining Minimum Annual Compensation (as defined in Exhibit A). Company will pay all amounts due within thirty days of the date of the applicable invoice. Any amount not paid when due will be subject to finance charges equal to 1.5% of the unpaid balance per month or the highest rate permitted by applicable usury law, whichever is greater, determined and compounded daily from the date due until the date paid. Company agrees that it will reimburse Parallel and/or MSO for any costs or expenses (including, but not limited to, reasonable attorneys’ fees) incurred by such Party to collect any amount that is not paid when due.

2.3 Billing. Client shall have the sole and exclusive right, and Parallel shall have no right, to enter into contracts with third-party payors and to bill and collect payments from Users and third-party payors for the Services rendered to Users pursuant to this Agreement. Parallel hereby assigns its right to bill any third-party payor or User for any reimbursable Service provided under this Agreement.

2.4 No Payments for Referrals. The Parties acknowledge and agree that this Agreement does not require any Party to make referrals to, or otherwise generate business for, any other Party. The payments required under this Agreement were negotiated on an arms-length basis, are intended to reflect fair market value, and were not determined in a manner that takes into account the volume or value of any referrals or other business generated, or expected to be generated, between the Parties. No amount paid by any Party is intended to be, nor will it be construed to be, an inducement or payment for referral of any individual to such Party. In addition, no fee set forth in this Agreement includes any discount, rebate, kickback, or other reduction in charge.

Article 3

CONFIDENTIALITY

3.1 Non-Disclosure of Confidential Information.

3.1.1 Restrictions and Limitations. Except as otherwise expressly provided in this Agreement or a separate written agreement between or among such Parties, no Party may disclose any other Party’s Confidential Information other than strictly on a need-to-know basis to such Party’s employees, professional staff and other personnel who require access to the other Party’s Confidential Information in order to perform the disclosing Party’s obligations or exercise the disclosing Party’s rights under this Agreement. Notwithstanding the foregoing, each Party agrees: (i) to hold the other Party’s Confidential Information in strict confidence, using the same degree of care and protection (but no less than a reasonable degree) that it exercises with its own Confidential Information of a similar nature; (ii) not to directly or indirectly disclose or otherwise make available any Confidential Information of the other Party to a third party (including consultants and independent contractors, unless such consultants or independent contractors require access to the other Party’s Confidential Information and have agreed in writing to abide by the confidentiality obligations in this Section to the same extent as applicable to such Party); and (iii) not to copy or use the other Party’s Confidential Information for any purpose other than as necessary to fulfill such Party’s obligations or to exercise its rights under this Agreement.

3.1.2 **Definition.** As used herein, “**Confidential Information**” means this Agreement, and all information (whether written, oral, electronic or otherwise, whether technical or non-technical in nature, and whether specifically identified as “confidential”, “proprietary”, “non-public”, or “competitively-sensitive”) provided by a Party to the other Party pursuant to this Agreement that a reasonable person would consider confidential, proprietary or otherwise competitively sensitive, including trade secrets, know-how, firmware, designs, data models, schematics, techniques, code, plans or any other information relating to the products, technology, services and business of the Party providing the information. Confidential Information shall not include information that: (i) is now or hereafter in the public domain through no fault of or breach by the recipient Party; (ii) prior to disclosure hereunder, is properly within the rightful possession of the recipient Party as evidenced by documentation of the recipient Party; or (iii) prior to or subsequent to disclosure hereunder, is lawfully received by the recipient Party from a third party who the recipient Party knows or has reason to believe is not subject to a restriction on further disclosure of such information.

3.1.3 **Return or Destruction of Confidential Information.** Upon the termination of this Agreement, each Party shall promptly cease any use and either destroy (and certify to the other Party as to such destruction), or deliver to the other Party, all Confidential Information of the other Party, in any form, other than the Party’s internal copies of this Agreement.

3.2 Survival. This Section shall survive the termination of this Agreement.

Article 4

TERM AND TERMINATION

4.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue for an initial term of one (1) year (“Initial Term”). Upon expiration of the Initial Term, the Agreement will not automatically renew.

4.2 Termination without Cause. Parallel and MSO may terminate this Agreement at any time without cause upon thirty (30) days’ written notice to Client. Client may terminate without cause if Client has paid Parallel seventy-five percent (75%) of the Minimum Annual Compensation upon thirty (30) days’ written notice to Parallel, *provided however*, that if Client terminates the Agreement pursuant to this Section 4.2, Client will either: (i) immediately pay Parallel the remainder of the unpaid Minimum Annual Compensation; or (ii) provide Parallel with additional work such that Parallel will earn the Minimum Annual Compensation.

4.3 Termination with Cause. In the event of a material breach of any obligation or covenant under this Agreement, the non-breaching Party will give the breaching Party written notice describing the breach. The breaching Party receiving such notice will have thirty (30) days to cure the breach. If the breach is not cured to the satisfaction of the non-breaching Party, the non-breaching Party may immediately terminate the Agreement upon written notice to the other Party.

4.4 Effect of Termination. Upon the termination of this Agreement, neither Party shall have any further obligations hereunder except for (i) obligations accruing prior to the date of termination, including but not limited payment for Services provided and (ii) obligations, promises or covenants contained herein which are expressly made or intended to survive beyond the Term. All compensation accrued prior to the date of termination or otherwise due to Parallel under the terms of this Agreement will be immediately paid to Parallel upon termination of the Agreement. The Parties will work together in good faith to orderly transition Services and ensure there are no gaps in care, as appropriate and/or required under applicable law.

4.5 Termination Remedy Not Exclusive. The termination provisions in this Section are not exclusive, but rather are in addition to any other rights and remedies that the Parties may have at law or in equity.

Article 5

NON-SOLICITATION; REPRESENTATIONS AND WARRANTIES

5.1 Non-Solicitation Covenants.

During the Term of this Agreement, and for one (1) year after termination of this Agreement, Client shall not solicit or attempt to induce any employee or contractor of Parallel or MSO to terminate his or her relationship with such Party. The Parties acknowledge and agree that a violation of this non-solicitation provision would cause serious and irreparable harm to other Party. The covenant set forth in this Section shall survive the termination of this Agreement.

5.2 Representations and Warranties. Each Party represents and warrants that: (i) it has the requisite power and authority to execute, deliver and carry out this Agreement; (ii) neither it nor any of its employees, agents, directors, officers, members or managers, clinicians or representatives (collectively, “Personnel”) are currently excluded, debarred or suspended from participation in any federal healthcare program; and (iii) that to the best of its knowledge, neither it nor any of its Personnel are under investigation by any state or federal governmental agency that may lead to exclusion, debarment or suspension.

5.3 Injunctive Relief. The Parties acknowledge that monetary damages may be inadequate to compensate for a breach of the provisions contained in Sections 3.1 or 5.1 or other confidentiality provisions of this Agreement. In the event of a breach of such provisions, the injured Party shall be entitled to injunctive relief (without the need to post bond) and any and all other remedies available at law or in equity. This Section in no way limits the liability or damages that may be assessed against a Party in the event of a breach by the other Party of any of the provisions of this Agreement.

5.4 Survival. This Section shall survive the termination of this Agreement.

Article 6

INDEMNIFICATION; LIMITATIONS OF LIABILITY; DISCLAIMER

6.1 Indemnification by Client. Client hereby agrees to indemnify, defend and hold harmless Parallel and MSO, and each of their respective officers, directors, members, managers, employees, agents and representatives, from and against any and all liabilities, demands, claims, actions or causes of action, assessments, judgments, losses, costs, damages or expenses (including reasonable attorneys’ fees) sustained or incurred by such Party to the extent the same result from or arise out of a third-party claim based on any breach of this Agreement, violation of law, or negligent, reckless or willful act or omission by Client, or its officers, directors, members, managers, employees, agents and representatives.

6.2 Indemnification by Parallel and MSO. Parallel and MSO hereby agree to indemnify, defend and hold harmless Client and its officers, directors, members, managers, employees, agents and representatives, from and against any and all liabilities, demands, claims, actions or causes of action, assessments, judgments, losses, costs, damages or expenses (including reasonable attorneys’ fees) sustained or incurred by Client to the extent the same result from or arise out of a third-party claim based on any breach of this Agreement, violation of law, or negligent, reckless or willful act or omission by such Party, or its officers, directors, members, managers, employees, agents and representatives

6.3 Limitation of Liability. IN NO EVENT WILL ANY PARTY’S LIABILITY UNDER THIS AGREEMENT OR IN CONNECTION WITH THE SERVICES PROVIDED BY PARALLEL OR THE

PARALLEL PROVIDERS INCLUDE ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OR CLAIMS FOR LOSS OF BUSINESS OR PROFITS, UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHER LEGAL THEORY, REGARDLESS OF THE CAUSE OF ACTION AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. MSO AND PARALLEL'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CLIENT HEREUNDER SINCE ITS COMMENCEMENT, BUT IN NO EVENT LONGER THAN TWELVE (12) MONTHS PRIOR TO SUCH INCIDENT. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. The Parties acknowledge that the limitations in this section have been negotiated by them and reflect a fair allocation of risk and form an essential basis of the bargain and will survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy.

6.4 Disclaimer. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS AGREEMENT, NEITHER PARALLEL NOR MSO MAKES ANY ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. PARALLEL AND MSO EXPRESSLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. NOTWITHSTANDING ANYTHING SET FORTH HEREIN, NEITHER PARALLEL NOR MSO WARRANTS AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE SERVICES. PARALLEL AND MSO DO NOT WARRANT THAT THE SERVICES ARE ERROR-FREE OR THAT OPERATION OF THE SERVICES WILL BE SECURE OR UNINTERRUPTED. NEITHER PARALLEL NOR MSO WARRANTS THAT ANY INFORMATION PROVIDED THROUGH THE SERVICES IS OR WILL BE ACCURATE OR COMPLETE OR THAT ANY INFORMATION PROVIDED THROUGH THE SERVICES WILL ALWAYS BE AVAILABLE.

6.5 Survival. This Section shall survive the termination of this Agreement.

Article 7

MISCELLANEOUS PROVISIONS

7.1 Independent Contractor Status. The Parties shall at all times be, and act and perform as, as independent contractors in connection with this Agreement. None of the Parties, nor any of their officers, directors, employees or representatives shall be construed to be the agent, employee or representative of the other Party or have an express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the other Party.

7.2 Entire Agreement. This Agreement (including the recitals) and the other agreements, SOWs (if applicable), exhibits, and schedules referred to herein, constitute the entire agreement, and supersede all prior and contemporaneous agreements and understandings, both written and oral, between the Parties, with respect to the subject matter hereof. All exhibits, schedules, SOWs (if applicable), attachments or other documents referred to in this Agreement shall be either attached hereto or incorporated by reference herein.

7.3 Amendment; No Waiver. This Agreement may be amended before or after the Effective Date only by a written instrument signed by all Parties. No Party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Party.

7.4 Assignment. No Party may assign or delegate this Agreement or any of its rights and obligations hereunder without the prior written consent of the other Parties, and any Party's attempted assignment or delegation of this Agreement or any of its duties or obligations without the prior written consent of the other Parties shall be void and of no effect.

7.5 Applicable Law. All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without giving effect to any choice of law or conflict of law rules or provisions that would cause the application of the laws of any other jurisdiction.

7.6 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the respective successors and permitted assigns of the Parties. Nothing in this Agreement, express or implied, is intended to or shall confer upon anyone other than the Parties any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

7.7 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (i) if sent by registered or certified mail in the United States return receipt requested, upon receipt; (ii) if sent designated for overnight delivery by nationally recognized overnight air courier (such as DHL or Federal Express), one business day after mailing; and (iii) if otherwise actually personally delivered, when delivered; provided that such notices, requests, demands and other communications are delivered to the address set forth below, or to such other address as one Party shall provide by like notice to the other Party:

If to MSO or Parallel:

Parallel Learning, Inc.

228 Park Ave. S

#97411

New York, New York 10003

If to Client:

Mountain View Whisman School District

1400 Montecito Ave

Mountain View, CA 94043

7.8 Construction. For purposes of this Agreement: (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections and Exhibits refer to the Sections of, and Exhibits attached to this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard

to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

7.9 Headings. The section and other headings contained in this Agreement and in the exhibits and schedules to this Agreement are included for the purpose of convenient reference only and shall not restrict, amplify, modify or otherwise affect in any way the meaning or interpretation of this Agreement or the exhibits and schedules hereto.

7.10 No Third Party Rights. This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the Parties and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended to or shall confer upon any person (other than the Parties) any right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

7.11 Counterparts; Facsimile or Electronic Signatures. This Agreement may be executed in two counterparts, each of which shall be deemed an original and both of which shall constitute one and the same instrument, notwithstanding both of the Parties are not signatories to the original or the same counterpart.

* * *

IN WITNESS WHEREOF, the Parties have caused this Agreement to be effective on the Effective Date.

Mountain View Whisman School District

By: _____

Name: _____

Title: _____

PARALLEL LEARNING PSYCHOLOGY, P.C.

By:  _____
AB6336704092469...

Name: Diana Heldfond

Title: Administrator

PARALLEL LEARNING, INC.

By:  _____
AB6336704092469...

Name: Diana Heldfond

Title: CEO & Founder

EXHIBIT A**SERVICE RATES AND PAYMENT TERMS**

Annual Contract Minimum: \$165,000

Client agrees to Annual Contract Minimum in the amount of \$165,000. A Purchase Order, if required, for \$165,000 will be provided to Parallel upon execution of this agreement.

Payment Terms: Parallel to invoice Annual Contract Minimum upon execution of this agreement.

Scope of Work: 1900 hours of Speech Language Pathology services, including direct therapy and assessment.

Term: January 26, 2023 – June 30, 2023

Rates are based on the total contract value, inclusive of evaluations and services

		Flat Fee	Hourly Fee			
Volume tier	Annual Contract Minimum	Psycho-educational Evaluation*	Support Services (Tutors, EFC)	Licensed Special Ed Services	Behavioral Mental Health Services	Speech and Language Services
Tier 3	\$10,000-\$99,999	\$1,499	\$69	\$79	\$94	\$94
Tier 2	\$100,000-\$249,999	\$1,399	\$67	\$77	\$89	\$89
Tier 1	\$250,000 +	\$1,249	\$64	\$74	\$86	\$86

SERVICE DESCRIPTIONS

Psycho-education Evaluation includes:

- Evaluation coordination and reporting (Incl. data analysis and scoring, reporting writing, follow up and communications w/ family)
- Review of records by Psychologist
- Clinical interview with family
- Selecting battery of test
- Self-Report Rating Scales

- Achievement Standard Battery (learning evals)
- Standard Cognitive Battery (all evals)
- Attention/Processing Standard Battery
- Report delivery and feedback session with Psychologist

Support, Behavioral Mental Health, and Speech and Language Services are provided at the hourly rates shown above. *Please note that bilingual services are available upon request and may incur additional fees.*

EXHIBIT B

BUSINESS ASSOCIATE ADDENDUM PROVISIONS:

1. Definitions. Terms used, but not otherwise defined, in this BAA shall have the same meaning as those ascribed to the terms in the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Code of Federal Regulations (“C.F.R.”) at Title 45, Parts 160 and 164. The following terms shall have the meaning ascribed to them in this Section. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear.

1.1. “Breach Notice Rule” shall mean Notification in the Case of Breach of Unsecured Protected Health Information, C.F.R. at Title 45, Parts 160 and 164.

1.2. “Disclose” shall mean engaging in a Disclosure, as defined by HIPAA.

1.3. “Individual” shall mean the person who is the subject of the Protected Health Information and has the same meaning as defined by HIPAA and shall include a personal representative in accordance with 45 C.F.R. § 164.502(9).

1.4. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information, C.F.R. at Title 45, Parts 160 and 164.

1.5. “Protected Health Information” or “PHI” shall have the same meaning as defined in HIPAA, limited to that information created, maintained, accessed, or received by Business Associate from or on behalf of Covered Entity.

1.6. “Secretary” shall mean the Secretary of United States Department of Health and Human Services or his or her designee.

1.7. “Security Rule” shall mean the Standards for the Security of Electronic Protected Health Information, C.F.R. at Title 45, Parts 160 and 164.

2. Permitted Uses and Disclosures by Business Associate.

2.1. General Uses and Disclosures. Except as otherwise limited in this BAA, Business Associate may Use or Disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity, and if such Use or Disclosure of Protected Health Information would not violate the Privacy Rule if done by the Covered Entity.

2.2. Limits on Uses and Disclosures. Business Associate hereby agrees that it is prohibited from Using or Disclosing the Protected Health Information provided by or on behalf of Covered Entity for any purpose other than as required for Business Associate’s rendering of services to Covered Entity, as necessary and appropriate

to prosecute or defend a legal right or claim, as required or permitted by this BAA, as Required by Law, or as directed by Covered Entity.

2.3. Data Aggregation. Business Associate may Use and Disclose Protected Health Information to provide data aggregation services relating to the Health Care Operations of Covered Entity.

2.4. De-identification. Business Associate may de-identify PHI pursuant to 45 C.F.R. § 164.514 on behalf of Covered Entity.

2.5. Use for Management, Administration, and Legal Responsibilities. Business Associate may Use Protected Health Information for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities.

2.6. Disclosure for Management, Administration, and Legal Responsibilities. Business Associate may Disclose Protected Health Information for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities, provided that:

(a) The Disclosure is Required by Law; or

(b) Business Associate obtains reasonable assurances from the person to whom the Protected Health Information is Disclosed that the Protected Health Information will remain confidential and be Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the Protected Health Information has been breached.

3. Business Associate Obligations.

3.1. Appropriate Safeguards. Business Associate has implemented and will maintain reasonable and appropriate administrative, physical and technical safeguards to reasonably and appropriately protect the confidentiality, integrity, and availability of Protected Health Information and to prevent Uses or Disclosures of the Protected Health Information that are not permitted by this BAA or by law. Business Associate acknowledges that it will comply with the applicable provisions of the Security Rule.

3.2. Reports of Improper Use, Disclosure or Security Incidents. Business Associate hereby agrees that it shall report to Covered Entity any discovery of any:

(a) Use or Disclosure of Protected Health Information not provided for or allowed by this BAA or by law; or

(b) Security Event in regard to Protected Health Information within thirty (30) days of discovering such Security Event. In this context, "Security Event" means a Breach or a Security Incident, as those terms are defined by the Breach Notice Rule and Security Rule, respectively, provided however that "Security Incident" shall not include attempted, unsuccessful security incidents such as "pings" on a firewall or port scans. In the case of a Breach, the requisite notification to Covered Entity shall include, to the extent possible, the identification of each individual whose unsecured protected health information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach. Business Associate shall provide Covered Entity with such additional information as Covered Entity may reasonably request as necessary to make the notifications that may be required under 45 C.F.R. § 164.404(c) promptly after the information becomes available.

3.3. Subcontractors and Agents. Business Associate agrees that it must take reasonable measures to ensure that its agents and subcontractors, to whom it provides Protected Health Information as a result of the services to be performed pursuant to this BAA, agree to implement reasonable and appropriate safeguards to

protect that Protected Health Information. Business Associate agrees that such agents and subcontractors must agree to the same restrictions and conditions that apply to Business Associate, including, but not limited to, complying with the applicable requirements of the Security Rule.

3.4. Right of Access to Protected Health Information. Business Associate agrees to provide, at Covered Entity's request, access to Protected Health Information to Covered Entity or, as directed by Covered Entity, to an Individual, in accordance with the requirements of 45 C.F.R. § 164.524. Such access will be provided as soon as reasonably practicable and in no event later than fifteen (15) days from the date of the request.

3.5. Amendments to Protected Health Information. Business Associate agrees to make any amendments to Protected Health Information that Covered Entity directs or agrees to, in accordance with the requirements of 45 C.F.R. § 164.526, at the request of Covered Entity or an Individual. Such amendments will be made soon as reasonably practicable and in no event later than thirty (30) days from the date of the request.

3.6. Access to Books and Records. Subject to herein-described limitations, Business Associate agrees to make its internal practices, books and records relating to the Use and Disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary for purposes of determining Business Associate's and/or Covered Entity's compliance with the Privacy Rule.

3.7. Accounting of Disclosures. Business Associate agrees to document Disclosures of Protected Health Information and information related to such Disclosures as would be required for Business Associate to respond to a request by an Individual for an accounting of Disclosures of Protected Health Information in accordance with the requirements of 45 C.F.R. § 164.528. Business Associate agrees to provide such an accounting of Disclosures as soon as reasonably practicable and in no event later than thirty (30) days from the date Covered Entity requests such an accounting of Disclosures.

3.8. Specific Compliance with the Privacy Rule. To the extent Business Associate is to carry out Covered Entity's obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation.

3.9. Mitigation Procedures. Business Associate agrees to promptly mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of Protected Health Information.

4. Covered Entity's Obligations. Covered Entity shall notify Business Associate, in writing and in a reasonable time and manner, of any restrictions to the Use or Disclosure of Protected Health Information changing Business Associate's obligations that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522.

5. Term. The term of this BAA shall commence as of the Effective Date and shall terminate thirty (30) days from either Party's written notice to the other Party or from Business Associate's terminating their relationship to which the Protected Health Information in question relates (upon proper notice to Covered Entity), whichever is sooner.

6. Termination.

6.1. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this BAA by Business Associate, Covered Entity shall provide written notice of such breach to Business Associate and provide an opportunity for Business Associate to cure the breach or end the violation, and if Business Associate does not cure the breach or end the violation within ninety (90) days from receipt of the written notice ("Cure Period"), Covered Entity may immediately terminate this BAA. Likewise, upon Business Associate's knowledge of a material breach of this BAA by Covered Entity, Business Associate shall provide written notice of such breach to Covered Entity and provide an opportunity for Covered Entity to cure the breach or end the violation, and if

Covered Entity does not cure the breach or end the violation within the Cure Period, Business Associate may immediately terminate this BAA. Notwithstanding the foregoing, the Parties may mutually agree in writing to extend the Cure Period for a mutually determined period of time. Either Party may terminate this BAA immediately without opportunity for cure if both Parties agree that cure is not reasonably possible.

6.2. Special Termination. In the event that any federal, state or local law or regulation currently existing or hereinafter enacted, or any final or non-appealable construction or interpretation of such law or regulation (whether federal, state, or local) or enforcement of such laws or regulations hereinafter occurs that makes performance of this BAA impossible or illegal, the Parties mutually agree to enter into a modification of this BAA to make substantial performance of this BAA possible. However, should the Parties be unable to agree upon an appropriate modification to comply with such requirements following ninety (90) days of good faith negotiations, either Party may give written notice to immediately terminate this BAA. Notwithstanding the foregoing, the parties may mutually agree in writing to extend the period of time required to modify this BAA for a mutually determined period of time.

6.3. Effect of Termination.

(a) Upon termination of this BAA, for any reason, Business Associate hereby agrees to return all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, or destroy such Protected Health Information.

(b) In the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall extend the protections of this BAA to such Protected Health Information and limit further Uses and Disclosures of such Protected Health Information to those purposes that make the return or destruction not feasible.

7. General Provisions.

7.1. Regulatory References. Any reference in this BAA to a section in the Privacy Rule, the Security Rule, or the Breach Notice Rule means the section as in effect or as amended, and for which compliance is required.

7.2. Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for Business Associate to comply with the requirements of the Privacy Rule, the Security Rule, the Breach Notice Rule, and HIPAA. No changes in or additions to this BAA shall be recognized unless incorporated herein by written amendment by the Parties, such amendment(s) to become effective on the date stipulated in such amendment(s). No discharge of obligations arising under this BAA shall be valid unless in writing and executed by the Party against whom such discharge is sought to be enforced.

7.3. Interpretation. Any ambiguity in this BAA shall be resolved in favor of a meaning that permits the Parties to comply with the Privacy Rule, the Security Rule, the Breach Notice Rule, or HIPAA.