HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT BUSINESS ASSOCIATE AGREEMENT

Between

The New York City Department of Health and Mental Hygiene And

This Health Insurance Portability And Ad	ccountability Act Business Associate Agreement
("Agreement") made as of	("Effective Date") by and between the City
of New York through its Department of Hea	lth and Mental Hygiene ("DOHMH" or "Covered
Entity"), Division of	_, having its primary offices at Gotham Center, 42
09 28th Street, Queens, NY 11101-4132, an	d ("Business
Associate"), having its primary offices	, (each a "Party" and,
collectively, the "Parties").	
which require Business Associate to have ac	Business Associate for the delivery of services coess to Protected Health Information maintained be Portability and Accountability Act of 1996; by Business Associate to DOHMH include
pursuant to contract	which is
attached to this Agreement as Attachment A	
-	
	the mutual promises and covenants contained in d consideration, the receipt and sufficiency of agree to the following:

I. **DEFINITIONS**

Except as otherwise defined herein, any and all terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules (as defined below). As used in this Agreement, the following terms shall have the following meanings:

- (a) "Breach" shall have the same meaning as the term "breach" in 45 CFR §164.402.
- (b) "Business Associate" shall have the same meaning as the term "business associate" in 45 CFR §160.103, and for this Agreement shall be ______.

- (c) "Covered Entity" shall have the same meaning as the term "covered entity" in 45 CFR §160.103, and for this Agreement shall be DOHMH.
- (d) "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR §164.501.
- (e) "Electronic Protected Health Information" or "Electronic PHI" shall have the same meaning as the term "electronic protected health information" in 45 CFR §160.103, except that Electronic PHI shall be limited to the information created, received, maintained, transmitted, or accessed by Business Associate or its Subcontractors or agents on behalf of Covered Entity.
- (f) "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191, and the regulations promulgated thereunder, as the law and regulations may be amended.
- (g) "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164, as they may be amended.
- (h) "Individual" shall have the same meaning as the term "individual" in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- (i) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 CFR §160.103, except that PHI shall be limited to the information created, received, maintained, transmitted, or accessed by Business Associate or its Subcontractors or agents on behalf of Covered Entity.
- (j) "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR §164.103.
- (k) "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- (*l*) "Security Incident" shall have the same meaning as the term "security incident" in 45 CFR §164.304.
- (m) "Subcontractor" shall have the same meaning as the term "subcontractor" in 45 CFR §160.103, and for this Agreement shall be a subcontractor of Business Associate.
- (n) "Unsecured Protected Health Information" or "Unsecured PHI" shall have the same meaning as the term "unsecured protected health information" in 45 CFR §164.402.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

(a) **Permitted or Required Uses.** Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement and Attachment A to this Agreement, or as Required By Law.

- (b) **Appropriate Safeguards.** Business Associate agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement, and with respect to Electronic Protected Health Information to comply with Subpart C of 45 CFR Part 164 (45 CFR §164.302 et seq.).
- (c) **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effects of which Business Associate becomes aware that have resulted from any unauthorized acquisition, access, use or disclosure of Protected Health Information by Business Associate, its Subcontractors or agents.
- (d) Reporting Unauthorized Use or Disclosure. Business Associate agrees to report to Covered Entity, in writing, any unauthorized acquisition, access, use or disclosure of Protected Health Information by Business Associate, its Subcontractors or agents in violation of this Agreement of which Business Associate becomes aware. Business Associate shall make such report to the designated representative of Covered Entity, in writing, within five (5) business days of having been made aware of such unauthorized acquisition, access, use or disclosure. Business Associate agrees to fully cooperate with any investigation conducted by Covered Entity or its designated agents of any such unauthorized acquisition, access, use or disclosure.

(e) Breach Notification Under HIPAA Rules.

- (1) Business Associate agrees to comply with the requirements of Subpart D of 45 CFR Part 164 (45 CFR §164.400 et seq.), including but not limited to the requirement that, following the discovery of any Breach of Unsecured PHI, Business Associate shall, without unreasonable delay, and in no event later than sixty (60) days after discovery of any Breach of Unsecured PHI, notify Covered Entity in writing of any such Breach, unless a delay in such notification is required by 45 CFR §164.412. Business Associate shall provide Covered Entity with an explanation in writing of the basis for its determination that a Breach of Unsecured PHI has occurred and any risk assessment conducted under 45 CFR §164.402 (see paragraph (2) in definition of "Breach"), and all documentation in support of such determination.
- (2) If Business Associate finds that an unauthorized acquisition, access, use or disclosure of PHI has occurred and has been reported to Covered Entity as required by Section II(d) or Section IV(c), but has been determined not to constitute a Breach of Unsecured PHI, Business Associate shall provide Covered Entity with an explanation in writing of the basis for such determination and any risk assessment conducted under 45 CFR §164.402 (see paragraph (2) in definition of "Breach"), and all documentation in support of such determination. Such explanation in writing shall be provided without unreasonable delay, and in no event later than sixty (60) days after the discovery of the unauthorized acquisition, access, use or disclosure of PHI.
- (3) Business Associate shall fully cooperate with any investigation conducted by Covered Entity or its designated agents of whether a Breach of Unsecured PHI has occurred. In the event of a disagreement between Business Associate and Covered Entity as to whether or not such a Breach has occurred, the determination made by Covered Entity shall control.
- (4) Business Associate shall bear all costs related to its determination whether Business Associate has had a Breach of Unsecured PHI. In the event a Breach of Unsecured PHI has

occurred, Business Associate shall reimburse Covered Entity for all costs incurred by Covered Entity related to: (i) providing the notice required by 45 CFR §§ 164.404 and 164.406, including if applicable, but not limited to, written notice, substitute notice, additional notice in urgent situations, and notification to media; and (ii) all measures in mitigation of the harmful effects of any acquisition, access, use, or disclosure of PHI that are commercially reasonable, including but not limited to, credit monitoring services for individuals affected by such Breach, and any other commercially reasonable preventive measure. The determination of whether a measure in mitigation of the harmful effects of any acquisition, access, use, or disclosure of PHI is commercially reasonable shall be in the sole discretion of the Covered Entity.

- (f) Subcontractors and Agents. In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), as applicable, Business Associate agrees to ensure that all of its Subcontractors and agents that create, receive, maintain, transmit, or access Protected Health Information on behalf of Business Associate, agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information. Business Associate is not in compliance with this Agreement if Business Associate knew of a pattern of activity or practice of a Subcontractor that constituted a material breach or violation of the Subcontractor's obligations under its subcontract, unless Business Associate took reasonable steps to cure the breach or end the violation, as applicable, and if such steps were unsuccessful, terminated the subcontract, if feasible.
- (g) Access by Individual. Business Associate agrees to provide access, at the request of Covered Entity, and in the reasonable time and manner designated by the Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual or Individual's designee in order to satisfy Covered Entity's obligations under 45 CFR §164.524, provided that Business Associate has Protected Health Information in a Designated Record Set.
- (h) Amendment to PHI. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in the reasonable time and manner designated by the Covered Entity, and to take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR §164.526, provided that Business Associate has Protected Health Information in a Designated Record Set.
- (i) Request for an Accounting. Business Associate agrees to document such disclosures of Protected Health Information, and information related to such disclosures, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528. Business Associate agrees to make available to Covered Entity or an Individual, in the reasonable time and manner designated by the Covered Entity, information collected pursuant to this Section II(i) in order to provide an accounting of disclosures as necessary to satisfy Covered Entity's obligations under 45 CFR §164.528.
- (j) Additional Restrictions on PHI. If Covered Entity notifies Business Associate that it has agreed to be bound by additional restrictions on the uses or disclosures of certain Protected Health Information pursuant to the HIPAA Rules, Business Associate agrees to be bound by

such additional restrictions and shall not disclose such PHI in violation of such additional restrictions.

- (k) Carrying Out Covered Entity Obligation(s). To the extent that Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164 (45 CFR §164.500 et seq.), Business Associate shall comply with the requirements of such Subpart E that apply to the Covered Entity in the performance of such obligation(s).
- (1) Access by Secretary to Determine Compliance. Business Associate agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Protected Health Information created, received, maintained, transmitted, or accessed by Business Associate on behalf of Covered Entity, available to the Covered Entity and to the Secretary, in the reasonable time and manner designated by the Covered Entity, or in the time and manner designated by the Secretary, as applicable, for purposes of determining compliance with the HIPAA Rules. Business Associate shall immediately notify Covered Entity upon receipt of any request by the Secretary for access and of all materials to be disclosed pursuant to such request.

III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- (a) Use and Disclosure for Performance. Except as otherwise provided in this Agreement, Business Associate may only use or disclose Protected Health Information as necessary to perform services, functions, activities, and/or duties for, or on behalf of, Covered Entity as specified in Attachment A to this Agreement, or as necessary to perform its duties under this Agreement, or as Required by Law, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity.
- (b) **Disclosure to Third Parties.** Subject to Section II(f) and Section IV(b) of this Agreement, Business Associate may disclose Protected Health Information to third parties as necessary to perform services, functions, activities, and/or duties for, or on behalf of, Covered Entity as specified in **Attachment A** to this Agreement, or as necessary to perform its duties under this Agreement. The third parties shall provide written assurances of their confidential handling of such PHI, which shall include adherence to the same restrictions and conditions on use and disclosure as apply to Business Associate herein.
- (c) **Minimum Necessary Use and Disclosure.** In accordance with the HIPAA Rules, when using or disclosing Protected Health Information, or when requesting PHI from Covered Entity or another covered entity or business associate, Business Associate agrees to make reasonable efforts to limit the PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.
- (d) **Use for Management, Administration and Legal Responsibilities.** Business Associate may use Protected Health Information if necessary for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (e) Disclosure for Management, Administration and Legal Responsibilities. Business Associate may disclose Protected Health Information if necessary for the proper management

and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that (1) the disclosure is Required By Law, or (2) (A) Business Associate obtains reasonable assurances from the person to whom the information 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 (B) the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. To the extent permitted by applicable law, prior to disclosing PHI as Required by Law to a law enforcement, regulatory, administrative, or oversight agency, or in response to a subpoena, court order, civil investigative demand, or other compulsory document or lawful process, Business Associate shall notify Covered Entity of such pending disclosure and provide reasonable time for Covered Entity to oppose such disclosure, should Covered Entity deem such opposition necessary; provided, however, that if Covered Entity does not respond to Business Associate regarding such opposition prior to the date on which such disclosure must be timely made, Business Associate may, in its own discretion, disclose PHI as Required by Law or such lawful process.

- (f) **Data Aggregation Services.** Business Associate may use or disclose Protected Health Information to provide data aggregation services relating to the health care operations of the Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B). Under no circumstances may Business Associate disclose PHI to any other person or entity pursuant to this Section III(f) without the express authorization of Covered Entity.
- (g) **De-identified PHI.** Business Associate agrees that it will obtain the prior approval of Covered Entity before de-identifying Protected Health Information in accordance with 45 CFR §164.514(a)–(c) and utilizing such de-identified PHI.
- (h) **Use of PHI or De-identified PHI for Research Purposes.** Business Associate agrees that it will obtain the prior approval of Covered Entity for the use or disclosure of Protected Health Information or de-identified PHI for research purposes.

IV. SECURITY REQUIREMENTS

- (a) Safeguards to Protect Electronic PHI. Business Associate agrees to comply with the applicable requirements of Subpart C of 45 CFR Part 164 (45 CFR §164.302 et seq.), which include but are not limited to, implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that Business Associate creates, receives, maintains, transmits, or accesses on behalf of Covered Entity. Business Associate shall additionally comply with the City of New York Information Security Policies and Standards, Cyber Command Policies and Standards, or any other policies and procedures by the City of New York Office of Technology and Innovation, available at https://www.nyc.gov/content/oti/pages/vendor-resources/cybersecurity-requirements-for-vendors-contractors, as they may be amended or placed on a successor site by the City of New York.
- (b) **Subcontractors and Agents.** In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), as applicable, Business Associate agrees to ensure that all of its Subcontractors and agents that create, receive, maintain, transmit, or access Electronic Protected Health Information on behalf of Business Associate agree in writing to comply with the applicable

requirements of Subpart C of 45 CFR Part 164 (45 CFR §164.302 et seq.), which include but are not limited to, implementing reasonable and appropriate safeguards to protect such information.

(c) **Reporting Security Incident.** Business Associate agrees to report to Covered Entity, in writing, any Security Incident involving Protected Health Information experienced by Business Associate, its Subcontractors or agents, of which Business Associate becomes aware. Business Associate shall make such report to the designated representative of Covered Entity, in writing, within five (5) business days of having been made aware of such Security Incident. Business Associate agrees to fully cooperate with any investigation conducted by Covered Entity or its designated agents of any such Security Incident.

V. COMPLIANCE WITH CERTAIN NEW YORK STATE LAWS AND 42 CFR PART 2

- (a) Confidentiality Under New York Law. Business Associate agrees to comply with all applicable New York State laws and any regulations promulgated thereunder governing the confidentiality of information created, received, maintained, transmitted, or accessed by Business Associate, its Subcontractors or agents on behalf of Covered Entity, including but not limited to the following provisions, as applicable: New York Public Health Law §18 (Access to Patient Information) and Article 27-F (HIV and AIDS Related Information); New York Mental Hygiene Law §\$22.05 and 33.13; New York Civil Rights Law §79-l; New York General Business Law §399-ddd (Confidentiality of Social Security Account Numbers), §399-h and §899-aa; and chapter 5 of title 10 of the Official Compilation of Codes, Rules, and Regulations of the State of New York.
- (b) **Breach Notification Under New York Law.** Pursuant to New York General Business Law ("GBL") §899-aa(2) and (3) and in conformity with Section II(d) and Section IV(c) of this Agreement, Business Associate shall, within five (5) business days of discovery thereof, notify Covered Entity of any "breach of the security of the system," as defined in GBL §899-aa(1)(c), that involves Protected Health Information containing individuals' "private information," as defined in GBL §899-aa(1)(b), that was, or was reasonably believed to be, acquired from Business Associate, its Subcontractors or agents by a person without valid authorization. Business Associate shall bear all costs related to its "breach of the security of the system" under GBL §899-aa. In the event such breach has occurred, Business Associate shall reimburse Covered Entity for all costs incurred by Covered Entity related to providing the notice required by GBL §899-aa(5), including if applicable, but not limited to: written notice; electronic notice; telephone notification; substitute notice; email notice; posting of notice on web site; and notification to major statewide media.
- (c) Confidentiality of substance use disorder information under federal law. Business Associate acknowledges that it may receive, store, or process patient identifying information related to substance use disorder diagnosis, treatment, or referral for treatment ("substance use disorder information") and that such information is protected by Part 2 of Title 42 of the Code of Federal Regulations ("Part 2 regulations"). For the purposes of this Agreement, Business Associate is a qualified service organization as defined in the Part 2 regulations. Business Associate shall comply with the applicable Part 2 regulations and shall resist in judicial proceedings any efforts to obtain access to substance use disorder information except as permitted by the Part 2 regulations.

VI. OBLIGATIONS OF COVERED ENTITY

- (a) **Notify of Limitation(s) in Privacy Notice.** Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices utilized by Covered Entity under 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- (b) **Notify of Changes in Individual's Permission.** Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- (c) **Notify of Restriction on Use or Disclosure.** Covered Entity shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information 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 Protected Health Information.
- (d) Impermissible Request by Covered Entity. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity.

VII. TERM AND TERMINATION

- (a) **Term**. This Agreement shall be effective until or the expiration date of the contract (if any) in Attachment A whichever is earlier, or until earlier termination of this Agreement. This Agreement may be extended upon agreement by the Parties.
- Termination for Violation of Material Term. In the event that Covered Entity reasonably believes that Business Associate may have violated a material term of this Agreement, Covered Entity shall have the right to investigate such violation, and Business Associate shall fully cooperate with any such investigation. If Covered Entity determines that Business Associate has violated a material term of this Agreement, Covered Entity may immediately terminate this Agreement without penalty or recourse to Covered Entity. Alternatively, Covered Entity may provide written notice to Business Associate of the existence of a violation of a material term of this Agreement, and afford Business Associate an opportunity to cure such violation to the satisfaction of Covered Entity within thirty (30) days of receiving notice of the violation or such other period of time as the parties may agree to. Failure to cure such violation within the applicable time period is grounds for immediate termination of this Agreement. If Covered Entity determines that neither cure of such violation nor termination is feasible, Covered Entity may report such violation to the Secretary and/or to any other governmental agency as may be required by applicable law, and Business Associate agrees that it shall not have or make any claim(s), whether at law or in equity, with respect to such report(s). Termination pursuant to this Section VII(b) shall be effectuated by a written notice to Business

Associate that specifies the violation upon which the termination is based and the effective date of the termination.

(c) Effect of Termination.

- (1) Except as provided in paragraph (2) of this Section VII(c), upon termination or expiration of this Agreement, Business Associate shall return or destroy, and ensure that its Subcontractors and agents return or destroy, all Protected Health Information received from Covered Entity, or created, maintained, received, or accessed by or on behalf of Business Associate or Covered Entity, that the Business Associate, its Subcontractors or agents still maintain in any form. Business Associate shall not retain, and shall ensure that its Subcontractors and agents not retain, copies of the Protected Health Information.
- (2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon receipt by Covered Entity of such notification that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement, and shall ensure that its Subcontractors and agents in writing extend the same protections, 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 infeasible, for so long as Business Associate, its Subcontractors or agents, as applicable, maintain such Protected Health Information.
- (d) **Non-exclusive Provisions.** The termination provisions of this Section VII are in addition to, and not in lieu of, the termination provisions provided in the contract (if any) in Attachment A to this Agreement and any other rights and remedies of the Covered Entity that are provided by law or by the contract (if any) in Attachment A to this Agreement.

VIII. INDEMNIFICATION

(a) Indemnification. Business Associate agrees to defend, indemnify and hold harmless Covered Entity, the City of New York, and their respective employees, officers, subcontractors, agents, and other members of their workforce (each of the foregoing hereinafter referred to as "indemnified party") against all losses suffered by the indemnified party and all liability to third parties arising from or in connection with: (1) any violation or breach of the provisions of this Agreement by Business Associate or its employees, directors, officers, Subcontractors, agents, or other members of its workforce; or (2) any negligent act or omission or intentional tortious act by Business Associate, its employees, directors, officers, Subcontractors, agents, or other members of its workforce that result in a violation of the HIPAA Rules. Accordingly, on demand, the Business Associate shall reimburse the indemnified party for any and all losses, liabilities, fines, penalties, costs, or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon indemnified party by reason of any suit, claim, action, proceeding, or demand by any third party which results from the conduct described in (1) or (2) above.

IX. MISCELLANEOUS

- (a) **Agency.** For purposes of this Agreement, it is the understanding and intention of the parties that Business Associate is acting as an independent contractor, and not an agent, of Covered Entity.
- (b) References to Law and Rules. A reference in this Agreement to any section of law or rules (including but not limited to the HIPAA Rules), means the section of law or rules as in effect or as amended.
- (c) Amendment. In order to ensure that this Agreement at all times remains consistent with applicable law and rules regarding use and disclosure of Protected Health Information (including but not limited to the HIPAA Rules), Business Associate agrees that this Agreement may be amended from time to time upon written notice from Covered Entity to Business Associate as to the revisions required to make this Agreement consistent with applicable law and rules.
- (d) **Survival.** The respective rights and obligations of Business Associate and Covered Entity under the provisions of this Agreement shall survive the expiration or termination of this Agreement.
- (e) **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with the HIPAA Rules and the applicable State laws cited in Section V of this Agreement.
- (f) **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.
- (g) Merger Clause. This Agreement and the Attachments hereto constitute the entire understanding of the Parties and merges all prior discussions, agreements or understandings into it. No prior agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties.

[end of page]

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto have executed this Agreement as of the day and date first written above.

NEW YORK CITY DEPARTMENT OF HEALTH AND
MENTAL HYGIENE
By:
Deputy Commissioner
Division of
BUSINESS ASSOCIATE
By:
NAME AND TITLE

ATTACHMENT A

Version	Date
1.0	Pre 2023
2.0	July 2023