

PROFESSIONAL SERVICE AGREEMENT
BETWEEN THE COUNTY OF ALBANY
AND GUARDIAN CONSULTANT SERVICES, INC.
FOR PHARMACY CONSULTANT SERVICES
AT THE SHAKER PLACE REHABILITATION AND NURSING CENTER

PURSUANT TO RES. NO. 209 FOR 2020, ADOPTED JUNE 8, 2020

This Agreement is made by and between the County of Albany, a municipal corporation, acting by and through its County Executive, with a principal place of business located at the Albany County Office Building, 112 State Street, Albany, New York 12207 (hereinafter called the "County") and Guardian Consulting Services, Inc., a New York corporation, with its principal place of business located at 3333 New Hyde Park Road, Suite 202, New Hyde Park, New York 11042 (hereinafter called the "Consultant," and together with the County, may be referred to herein as the "[p]arties.").

WITNESSETH

WHEREAS, the County has a need for pharmacy consultant services at the Shaker Place Rehabilitation and Nursing Center; and

WHEREAS, the Albany County Purchasing Division (hereinafter called the "Purchasing Division") has issued a request for proposals for Pharmacy Consultant Services at the Shaker Place Rehabilitation and Nursing Center, said request having been issued on March 30, 2020 and published on April 9, 2020 (hereinafter called the "RFP"); and

WHEREAS, the Purchasing Division has issued an addendum to the RFP on April 3, 2020 (hereinafter called the "Addendum"); and

WHEREAS, the Consultant has submitted a proposal dated April 13, 2020 to provide the aforesaid pharmacy consultant services and the Consultant was the sole proposer; and

WHEREAS, the County has accepted the Proposal of the Consultant to provide the aforesaid pharmacy consultant services; and

WHEREAS, the Albany County Legislature has authorized the Albany County Executive to enter into an agreement with the Consultant regarding the aforesaid pharmacy consultant services pursuant to Resolution No. 209 for 2020, Adopted June 8, 2020; and

WHEREAS, this Agreement sets forth the understanding reached by the parties herein;

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY COVENANT AND AGREE AS FOLLOWS:

ARTICLE I. THE CONTRACT DOCUMENTS; INTERPRETATION

1.1 The Contract Documents consist of the following: this Agreement; the RFP, which is incorporated by reference and made a part hereof; and the Proposal, which is incorporated by reference and made a part hereof (collectively called "the Agreement" hereinafter).

1.2 In the event of any discrepancy, disagreement or ambiguity among the Contract Documents, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity: 1) this Agreement; 2) the RFP; 3) the Proposal.

ARTICLE II. SCOPE OF SERVICES

2.1 The Consultant shall provide all of the services described in the RFP, including, but not limited to, the following:

2.1.1 The Consultant shall appoint an individual pharmacist licensed in the State of New York and acceptable to the Shaker Place Rehabilitation and Nursing Center to provide pharmacy consultant services to the Shaker Place Rehabilitation and Nursing Center.

2.1.2 The Consultant shall provide supervision of, and consultation regarding, the Shaker Place Rehabilitation and Nursing Center procedures for the control and accountability of all drugs, intravenous solutions and biologicals throughout the facility to better ensure the Shaker Place Rehabilitation and Nursing Center's policies and procedures are in compliance with applicable local, state and federal laws and regulations.

2.1.3 The Consultant shall perform Medication Regimen Reviews (MRRs) for each new admission, and monthly for each resident, and shall provide a report of each review to the Shaker Place Rehabilitation and Nursing Center's Medical Director, Attending Physicians and Director of Nursing, together with accompanying memos, registers, policy statements and review factors. Admission MRRs shall be submitted to the Director of Nursing and designee.

2.1.4 The Consultant shall establish for the Shaker Place Rehabilitation and Nursing Center; a system to conduct a review of resident records for receipt and disposition of controlled drugs and the maintenance of such records in sufficient detail so as to allow an accurate reconciliation. Narcotic drug disposal shall be conducted upon request by the Shaker Place Rehabilitation and Nursing Center.

2.1.5 The Consultant shall arrange for and complete monthly inspections of all six (6) nursing units. Content of the review will be determined by the Shaker Place Rehabilitation and Nursing Center. Inspection findings will be submitted to the facility's Director of Nursing and designee.

2.1.6 The Consultant shall provide written monthly reports to the Administrator, Quality Assurance Committee and Director of Nursing Services regarding the status of the Shaker Place Rehabilitation and Nursing Center pharmaceutical services and staff performance.

2.1.7 The Consultant shall arrange for and/or conduct monthly in-service education programs as requested by the Shaker Place Rehabilitation and Nursing Center.

2.1.8 The Consultant shall attend facility-designated monthly meetings as requested by the Shaker Place Rehabilitation and Nursing Center.

2.1.9 The Consultant shall provide monthly reports to the Pharmacy and Medication Review Committee and shall attend and participate in its meetings.

2.1.10 The Consultant shall assist in the revision and/or development of Shaker Place Rehabilitation and Nursing Center policies and procedures for routine and emergency or disaster drug control.

2.1.11 The Consultant shall conduct Medication Pass Audits as requested by Shaker Place Rehabilitation and Nursing Center.

2.2 In addition to the services and responsibilities described above, The Consultant shall perform all of the services and provide all of the responsibilities described in the Proposal, consistent with this Agreement and the RFP, and shall provide all other responsibilities required of a pharmacy consultant as set forth by applicable local, state and federal laws and regulations.

ARTICLE III. TERM OF THE AGREEMENT

The term of this Agreement shall commence on August 1, 2020 and will continue in effect through July 31, 2023.

ARTICLE IV. COMPENSATION AND PAYMENT

4.1 In consideration of the terms and obligations of this Agreement, the County agrees to pay, and the Consultant agrees to accept, a sum not to exceed ONE HUNDRED FORTY FOUR THOUSAND THREE HUNDRED SEVENTY TWO AND 00/100 DOLLARS (\$144,372.00) for the term of this Agreement.

4.2 Payment shall be made to the Consultant by the County upon the Consultant's submission of a properly executed Albany County Claim Form, plus all supporting documentation, to the Shaker Place Rehabilitation and Nursing Center, and approval by the County of the claim.

ARTICLE V. AVAILABLE DATA

All technical or other data relative to the work in the possession of the County or in the possession of the Consultant shall be made available to the other party to this Agreement without expense to the other party.

ARTICLE VI. COOPERATION

The Consultant shall cooperate with representatives, agents and employees of the County and the County shall cooperate with representatives, agents and employees of the Consultant to the end that work may proceed expeditiously and economically.

ARTICLE VII. EXTRA WORK/SERVICES

If the Consultant is of the opinion that any work/services the Consultant has been directed to perform is beyond the scope of this Agreement and constitutes Extra Work/Services, the Consultant shall promptly notify the County of that fact. The County shall be the sole judge as to whether or not such work/services is in fact beyond the scope of this Agreement and whether or not it constitutes Extra Work/Services. In the event that the County determines that such work/services does constitute Extra Work/Services, it may provide extra compensation to the Consultant on a negotiated basis.

ARTICLE VIII. MACBRIDE PRINCIPLES

The Consultant hereby represents that it is in compliance with the MacBride Principles of Fair Employment as set forth in Albany County Local Law No. [3] for 1993, in that said Consultant either (a) has no business operations in Northern Ireland or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles. In the event of a violation of this stipulation, the County reserves all rights to take remedial measures as authorized under section 4 of Local Law No. [3] in 1993, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the Consultant in default and/or seeking debarment or suspension of the Consultant.

ARTICLE IX. ASSIGNMENTS

The Consultant specifically agrees as required by N.Y. General Municipal Law § 109 that the Consultant is prohibited from assigning, transferring, conveying, subcontracting, or otherwise disposing of this Agreement, or of the Consultant's right, title or interest therein, without the previous consent in writing of the County.

ARTICLE X. OWNERSHIP OF-MATERIALS

All rights, title, and ownership in and to all material prepared under the provisions of this Agreement shall remain the property of the County.

ARTICLE XI. SCHEDULE

The Consultant shall complete all work/services in a timely manner to protect the interests and rights of the County to the fullest extent reasonably possible.

ARTICLE XII. RELATIONSHIP

The Consultant is, and will function as, an independent Consultant under the terms of this Agreement and shall not be considered an agent or employee of the County for any purpose, and the employees of the Consultant shall not in any manner be, or be held out to be, agents or employees of the County.

ARTICLE XIII. INDEMNIFICATION

The Consultant shall defend, indemnify and save harmless the County, its employees and agents, from and against all claims, damages, losses and expenses (including, without limitation, reasonable attorney's fees) arising out of, or in consequence of, any negligent or intentional act or omission of the Consultant, its employees or agents, to the extent of its or their responsibility for such claims, damages, losses and expenses.

ARTICLE XIV. INSURANCE

14.1 The Consultant shall procure and maintain for the entire term of this Agreement, without additional expense to the County, insurance policies of the kinds and in the amounts provided in the Schedule A attached hereto and made a part hereof. The insurance policies shall name the County as an additional insured. Such policies may only be changed upon thirty (30) days prior written approval by the County.

14.2 The Consultant shall, prior to commencing any of the services outlined herein, furnish the County with Certificates of Insurance showing that the requirements of this article have been met. The Consultant shall also provide the County with updated Certificates of Insurance prior to the expiration of any previously-issued certificate. No work shall be commenced under this Agreement until the Consultant has delivered the Certificates of Insurance to the County. Upon failure of the Consultant to furnish, deliver and maintain such insurance certificates as provided above, the County may declare this Agreement suspended, discontinued or terminated.

14.3 As required by Section 108 of the N.Y. General Municipal Law, this Agreement shall be of no force and effect unless the Consultant shall secure compensation for the benefit of, and keep insured during the life of this Agreement, all employees engaged thereon in compliance with the provisions of the N.Y. Workers' Compensation Law. The Consultant shall require any subconsultant authorized by the County to do likewise for all of their employees engaged thereon, all in compliance with the provisions of the N.Y. Workers' Compensation Law and of Schedule A of this Agreement.

ARTICLE XV. NON-APPROPRIATIONS CLAUSE

Notwithstanding anything contained herein to the contrary, no default shall be deemed to occur in the event no funds or insufficient funds are appropriated or budgeted by or are otherwise unavailable to the County for payment. In that event, the County will immediately notify the Consultant of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the County of any kind whatsoever, except as to those portions herein agreed upon for which funds shall have been appropriated and budgeted.

ARTICLE XVI. TERMINATION OF AGREEMENT

The County shall have the right at any time to terminate the work/services required of the Consultant under this Agreement by written notice of such termination. In the event of such terminations of this Agreement, the Consultant shall be entitled to compensation for all work/services authorized and performed pursuant to this Agreement in accordance with ARTICLE IV of this Agreement.

ARTICLE XVII. MODIFICATIONS

This Agreement may only be modified by a formal written amendment or change order executed by the County and the Consultant.

ARTICLE XVIII. PARTIAL INVALIDITY

If any term, part, provision, section, subdivision, or paragraph of this Agreement shall be held unconstitutional, invalid, or ineffective, in whole or in part, such determination shall not be deemed to invalidate the remaining terms, parts, provisions, sections, subdivisions, or paragraphs thereof.

ARTICLE XIX. NON-DISCRIMINATION

In accordance with all Local State and Federal statutory and constitutional non-discrimination provisions, the Consultant agrees that it shall comply with any and all anti-discrimination laws as established by Local State and Federal law, and that it shall not, by reason or race, creed, color, national origin, age, sex, sexual orientation, handicap or source of payment: (a) discriminate in hiring against any person who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the work contemplated by this Agreement.

ARTICLE XX. GOVERNING LAW

This Agreement shall be governed by and construed according to the law of the State of New York. Venue is designated as Albany County, New York.

ARTICLE XXI. BREACH

In the event of a breach by the Consultant, the Consultant shall pay to the County all direct and consequential damages caused by such breach, including, but not limited to, all sums expended by the County to procure a substitute Consultant to satisfactorily complete the contract work, together with the County's own costs incurred in procuring a substitute Consultant.

ARTICLE XXII. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall read and shall be enforced as though so included. The Consultant shall comply with all applicable laws, rules and regulations.

ARTICLE XXIII. INFORMATION ACCESS/ACCOUNTING RECORDS

23.1 The Consultant agrees to provide the County and authorized State and/or Federal personnel access to any and all books, documents, records, charts, software or any other information relevant to performance under this Agreement, upon request. The Consultant agrees to retain all of the above information for six (6) years after final payment or the termination of this Agreement, and shall make such information available to the County, State and/or Federal personnel during such period.

23.2 Proper and full accounting records shall be maintained by the Consultant, which records shall clearly identify the costs of the work performed under this Agreement. Such records shall be subject to periodic and final audit by the County or its designated representative upon request. Such records shall be accessible to the County for a period of two (2) years following the date of final payment by the County to the Consultant for the performance of the work contemplated herein.

ARTICLE XXIV. HIPAA COMPLIANCE

The parties agree to comply with the HIPAA Compliance provisions, attached hereto as Appendix A and made a part hereof.

ARTICLE XXV. NO WAIVER

No purported or alleged waiver of any of the provisions of this Agreement shall be valid or effective unless in writing signed by the party against whom it is sought to be enforced.

ARTICLE XXVI. MISCELLANEOUS PROVISIONS

26.1 In addition to the policies and procedures described above, the Consultant also acknowledges that it shall follow the Iranian Energy Sector Divestment (per N.Y. Gen. Mun. Law § 103-9), and all other policies and procedures described in the RFP.

26.2 This Agreement represents the entire Agreement between the County and the Consultant, and there are no collateral or oral agreements or understandings with respect to the subject matter of this Agreement. This Agreement shall not be modified in any manner except by an instrument executed by the parties.

26.3 During the term of this Agreement, the Consultant agrees that, in the event of its reorganization or dissolution as a business entity or change in business, the Consultant shall give the County thirty (30) days written notice in advance of such event.

26.4 The Consultant shall at all times obtain and maintain all licenses required by New York State, or other relevant regulating body, to perform the services required under this Agreement.

26.5 If any term, part, provision, section, subdivision or paragraph of this Agreement shall be held to be unconstitutional, invalid or ineffective, in whole or in part, such determination shall not be deemed to invalidate the remaining terms, parts, provisions, sections, subdivisions or paragraphs.

26.6 The County shall bear no responsibility other than that set forth in this Agreement.

26.7 All notices, consents, waivers, directions, requests or other instruments or communications provided for under this Agreement shall be deemed properly given if, and only if, delivered personally, sent by registered or certified United States mail, postage prepaid, or, with the prior consent of the receiving party, dispatched via facsimile transmission.

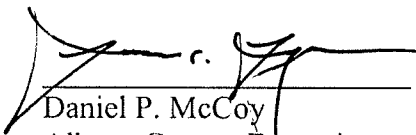
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SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

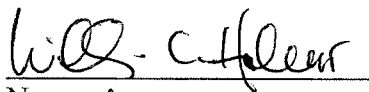
COUNTY OF ALBANY

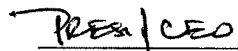
DATE: 8/18/2020

BY: 
Daniel P. McCoy
Albany County Executive
or
Daniel C. Lynch
Deputy County Executive

GUARDIAN CONSULTING
SERVICES, INC.

DATE: 8/11/2020

BY: 
Name: William C. Harrett


Title:

STATE OF NEW YORK)
COUNTY OF ALBANY) SS.:

On the _____ day of _____, 20____, before me, the undersigned, personally appeared Daniel P. McCoy, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF ALBANY) SS.:

On the 18th day of Aug, 2020 before me, the undersigned, personally appeared Daniel C. Lynch, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EUGENIA K. CONDON
Notary Public, State of New York
No. 02CO4969817
Qualified in Albany County
Commission Expires July 23, 2022

STATE OF New York)
COUNTY OF Nassau) SS.:

On the 11th day of August, 2020, before me, the undersigned, personally appeared William C. Hallett, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Stacey B. Somer
Notary Public

STACEY B. SOMER
Notary Public, State of New York
No. 01SO6132682
Qualified in Nassau County
Commission Expires August 29, 2021

SCHEDULE A
INSURANCE COVERAGE

The kinds and amounts of insurance to be provided are as follows:

1. Workers' Compensation and Employers Liability Insurance: A policy or policies providing protection for employees in the event of job related injuries or a waiver of the requirements of this insurance with such waiver to be issued by New York State.

2. Automobile Liability Insurance: A policy or policies with the limits of not less than \$500,000 for each accident because of bodily injury, sickness or disease, including death at any time, resulting therefrom, sustained by any person caused by accident, and arising out of the ownership, maintenance or use of any automobiles; and with the limits of \$500,000 for damage because of injury to or destruction of property, including the loss of the use thereof, caused by accident and arising out of the ownership, maintenance or use of any automobiles.

3. General Liability Insurance: A policy or policies including comprehensive form, personal injury, contractual, products/completed operations, premises operations and broad form property insurance shall be furnished with limits of not less than:

Liability for:	Combined Single Limit:
Bodily Injury	\$1,000,000.
Property Damage	\$1,000,000.
Personal Injury	\$1,000,000.

4. Professional Medical Malpractice Insurance: A policy or policies with limits of not less than \$1,000,000.00.

APPENDIX A HIPAA COMPLIANCE

OBLIGATIONS AND ACTIVITIES OF THE CONSULTANT AS A BUSINESS ASSOCIATE PURSUANT TO 45 CFR SECTION 164.504

The parties to the Agreement hereby agree to comply with the following provisions to ensure their compliance with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996.

Pursuant to the terms of the Agreement, and in accordance with the requirements of 45 CFR Sections 160 and 164, the CONSULTANT/CONSULTANT herein shall be considered a "Business Associate." The following terms are hereby incorporated in this AGREEMENT and shall be binding upon the parties hereto:

A. DEFINITIONS

1. "Business Associate" – under the terms of this Agreement, the term "Business Associate" shall mean the Consultant/Consultant, Guardian Consulting Services, Inc.
2. "Covered Entity" – for purposes of this Agreement, the term "Covered Entity" shall mean the COUNTY and/or the Shaker Place Rehabilitation and Nursing Center.
3. "Individual" – under the terms of this Agreement, the term "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 160.103, and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(g).
4. "Privacy Rule" – shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
5. "Protected Health Information" - shall have the same meaning as the term "protected health information" in 45 CFR Section 160.103, limited to the information created, received, maintained or transmitted by the Business Associate from or on behalf of the Covered Entity.
6. "Required by Law" – shall have the same meaning as the term "required by law" in 45 CFR Section 164.103.
7. "Secretary" – shall mean the Secretary of the Department of Health and Human Services or his/her Designee.
8. "SubConsultant" – shall have the same meaning as the term "subConsultant" in 45 CFR Section 160.103.

B. OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE

1. Pursuant to the terms of the Agreement, the Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement, or as required by law.
2. The Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of electronic Protected Health Information other than as provided for by

this Agreement in accordance with the requirements of 45 CFR Section 164.314(a)(2)(i).

3. Pursuant to the terms of the Agreement and as more particularly described in the INDEMNIFICATION provisions of the Agreement, the Business Associate hereby agrees, and shall be required to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of Protected Health Information by the Business Associate which is in violation of the requirements of the Agreement.
4. The Business Associate shall immediately report to the Covered Entity any use or disclosure of unsecured Protected Health Information not provided for by the Agreement, of which it shall become aware in accordance with the provisions of 45 CFR Section 164.410.
5. The Business Associate agrees to ensure that any agent, including a subConsultant, that creates, receives, maintains or transmits Protected Health Information on behalf of the Business Associate agrees to the same restrictions and conditions that apply through this Agreement to the Business Associate with respect to such information pursuant to 45 CFR Section 164.502(e)(1)(ii) by entering into a contract or other arrangement in accordance with the requirements of 45 CFR Section 164.314.
6. Business Associate agrees to provide access, at the request of the Covered Entity, to Protected Health Information in a Designated Record Set, to the Covered Entity or as directed by the Covered Entity, to an Individual, in order to meet the requirements under 45 CFR Section 164.524.
7. Business Associate agrees to make any necessary amendments to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees pursuant to 45 CFR Section 164.526, at the request of Covered Entity or an Individual, in a timely manner.
8. 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 received from, or created or received by the Business Associate on behalf of the Covered Entity, available to the Secretary for purposes of the Secretary determining the Covered Entity's compliance with the Privacy Rule.
9. 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 the requirements of 45 CFR Section 164.528.
10. Business Associate agrees to provide to the Covered Entity or an Individual, upon request, information which may be collected by the Business Associate during the term of this Agreement, for purposes of permitting the Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information, in accordance with the provisions of 45 CFR Section 164.528.
11. To the extent that the Business Associate is to carry out an obligation of the Covered Entity as a term of this Agreement, Business Associate agrees to comply with the requirements of the Privacy Rule under 45 CFR Section 164.504 that apply to the Covered Entity in the performance of such obligation.

C. *PERMITTED USES AND DISCLOSURE*

1. General Uses and Disclosure - Except as otherwise limited in this Agreement, the Business Associate may use or disclose Protected Health Information to perform the functions, activities, or services as defined in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if said disclosure were done by the Covered Entity, or the minimum necessary policies and procedures of the Covered Entity, as well as the applicable provisions of the New York State Mental Hygiene Law.
2. Specific Uses and Disclosure – Except as otherwise limited in this Agreement, the Business Associate may disclose Protected Health Information for the proper management and administration of the services to be provided by the Business Associate in this Agreement, provided that disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it 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 the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.
3. Except as otherwise limited in this Agreement, the Business Associate may use Protected Health Information to provide information required to the Covered Entity as permitted by 45 CFR Section 164.504 (e)(2)(i)(B).
4. Except as otherwise limited in this Agreement, the Business Associate may use Protected Health Information to carry out the legal responsibilities of the Business Associate.
5. The Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR Section 164.502 (j)(1).
6. Nothing within this section shall be construed as to inhibit the disclosure of information as may be required by the New York State Mental Hygiene Law, Sections 33.13 or 33.16, or other provisions, as may be required by Law.

D. *OBLIGATIONS OF COVERED ENTITY WITH REGARD TO PRIVACY PRACTICE AND RESTRICTIONS*

1. The Covered Entity shall notify the Business Associate of any limitations in its notice of privacy practices in accordance with 45 CFR Section 164.520, to the extent that such limitation may affect the Business Associate's use or disclosure of Protected Health Information.
2. The Covered Entity shall notify the Business Associate of any changes in, or revocation of, permission by the Individual to use or disclose Protected Health Information, to the extent that such changes may affect the Business Associate's use or disclosure of Protected Health Information.
3. The Covered Entity shall notify the Business Associate of any restriction to the use or disclosure of Protected Health Information that the Covered Entity has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of Protected Health Information.

E. PERMISSIBLE REQUESTS BY COVERED ENTITY

The Covered Entity shall not request the Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity.

F. COVERED ENTITY'S RESPONSIBILITIES UPON TERMINATION

1. The term of this Agreement shall be August 1, 2020 through July 31, 2023. Upon termination of this Agreement, the Covered Entity shall take such necessary precautions to ensure the confidentiality of the Protected Health Information, in accordance with the provisions of 45 CFR Section 164.
2. Termination for Cause – In the event that the Covered Entity becomes aware of a material breach by the Business Associate of the terms of this Appendix, the Covered Entity shall have the right, at its sole discretion, to proceed as follows:
 - (a) Provide an opportunity to the Business Associate to cure the breach, and end the violation within ten (10) business days. If the Business Associate does not cure the breach and end the violation within ten (10) business days, the Covered Entity shall have the right to immediately terminate the agreement; or,
 - (b) Immediately terminate the agreement if the Business Associate has breached a material term of this Appendix, and cure is not possible; or
 - (c) If neither termination of the agreement nor cure is feasible, the Covered Entity shall report the violation to the Secretary.

G. EFFECT OF TERMINATION

1. Upon termination of the Agreement, the Business Associate shall take all necessary precautions and extend the protections of this Agreement to all Protected Health Information, as if the Agreement were still in force and effect.
2. At the end of all audit and other relevant periods, as more particularly described in the RECORDS provisions of the Agreement, the Business Associate shall, if feasible, return or destroy all Protected Health Information received from or created or received by the Business Associate on behalf of the Covered Entity that the Business Associate still maintains in any form.

H. MISCELLANEOUS

1. Regulatory References – A reference in this Agreement to a section in the Privacy Rule or in the Mental Hygiene Law means the section as in effect or as amended.
2. Amendment – The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996.
3. Survival – The respective rights and obligations of the Business Associate with regard to this Appendix shall survive the termination of this Agreement.

4. Interpretation – Any ambiguity in this Agreement shall be resolved to permit the Covered Entity to comply with the Privacy Rule.
5. Incorporation in the Agreement – The terms of this Appendix “A” are hereby incorporated into the Agreement between the parties hereto.