

AGREEMENT
BETWEEN
THE COUNTY OF ALBANY
AND
CLINICAL STAFFING RESOURCES CORPORATION
FOR
CERTIFIED NURSING ASSISTANT SERVICES AT
THE SHAKER PLACE REHABILITATION AND NURSING CENTER

Resolution No. 461 of 2019—passed November 12, 2019

THIS AGREEMENT is made by and between the County of Albany, a municipal corporation organized under the laws of the State of New York, acting by and through its County Executive, with a principal office at the Albany County Office Building, 112 State Street, Albany, New York 12207 (hereinafter, the “County”), and Clinical Staffing Resources Corp., a New York corporation with a principal address of 420 Broadway, 3rd Floor, Brooklyn, New York 11211 (hereinafter, the “Contractor”). The County and Contractor may each individually be referred to as the “[P]arty” and together as the “[P]arties” as appropriate.

W I T N E S S E T H:

WHEREAS, the County (on behalf of the Shaker Place Rehabilitation and Nursing Center) has a need for Certified Nursing Assistant Services, said request having been denominated RFP #2019—050, and having been issued by the Albany County Department of General Services Purchasing Division (hereinafter called the “Purchasing Division”) on March 28, 2019 and published on March 28, 2019 (hereinafter called the “RFP”); and

WHEREAS, the County has issued a two addenda to RFP #2019-050, the first on April 2, 2019 (hereinafter “Addendum #1”); and a second on April 5, 2019 (hereinafter called “Addendum #2”, and together with Addendum #1, called the “Addenda”); and

WHEREAS, in response thereto, the Contractor has submitted a bid on April 11, 2019 (hereinafter called the “Proposal”); and

WHEREAS, the County has accepted the Bid of the Contractor to provide the aforesaid MDS Case Management Review Services on April 25, 2019; and

WHEREAS, the Albany County Legislature has authorized the County Executive to enter into an Agreement with the Contractor to provide the aforesaid Certified Nursing Assistant services from January 1, 2019 through December 31, 2022 via Resolution No. 461 of 2019, adopted November 11, 2019; and

WHEREAS, in furtherance thereof, the parties hereto desire to formalize their understanding and agreement regarding the provision of the aforementioned supplies, and to execute a fully-integrated Agreement with respect thereto;

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

ARTICLE 1. THE CONTRACT DOCUMENTS; INTERPRETATION

- 1.1 The Contract Documents consist of the following: this Agreement; Addendum #1, which is incorporated by reference and made a part hereof; Addendum #2, which is incorporated by reference and made a part hereof; the RFP, which is incorporated herein and made a part hereof in its entirety by reference; and the Proposal, which is incorporated herein and made a part hereof in its entirety by reference (collectively called "the Agreement" hereinafter).
- 1.2 In the event of any discrepancy, disagreement, or ambiguity among the documents which comprise this Agreement, 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 Addendum #2; 3) the Addendum #1; 4) the RFP; 5) the Proposal.

ARTICLE 2. SCOPE OF SERVICES TO BE PERFORMED BY CONTRACTOR

The Contractor shall provide Certified Nursing Assistant Services to the Shaker Place Rehabilitation and Nursing Center, in compliance with the terms of the RFP, its Addenda, and the Contractor's Proposal. These services shall include, but not be limited to:

- 2.1 Providing CNAs on a seven (7) day a week basis across all three (3) shifts.
- 2.2 Ensuring that all CNAs provided by the Contractor are in good health, have documentation of a physical exam, immunization against Rubella and Rubeola and have had PPD testing as per New York State Department of Health regulations. For CNA's working prior to and during each current influenza season, the Contractor will ensure that documentation of the influenza vaccine (if immunized) is provided to the County. If documentation is not received, or the CAN has not been immunized, they will be required to comply with NYSDOH regulations for influenza.
- 2.3 The Contractor shall provide appropriate background checks for all personnel furnished. Background checks shall, at a minimum, consist of an investigation to determine evidence of criminal history; verification of certification, and a check to find if they have been entered in the New York State Nurse Aid Registry concerning abuse. Such information shall be provided to the facility. The Contractor will be responsible to assure that all employees provided to the County are fingerprinted as per State and Federal Law. The Contractor will be responsible for any fees associated with submission of the fingerprint documents to the NYSDOH per Article 28-E of the Public Health Law and Section 845-b of the Executive Law.
- 2.4 The Contractor shall provide service on the next normal workday of the County on any orders placed prior to 1:00 P.M.

- 2.5 The Contractor shall, at a minimum, be available to accept orders between the hours of 9:00 A.M. and 3:00 P.M., seven days a week.
- 2.6 The County shall have the right to interview candidates upon initial arrival to determine their qualifications. The qualifications must reflect the position of the specific job title requested. The County may cancel the order if a selected candidate is deficient in the performance of an assignment.
- 2.7 The County may review Contractor's selection process and/or candidate resumes.
- 2.8 The County reserves the right to assign and direct Contractor's employees as needed.
- 2.9 The working shifts are as follows: 7am—3pm, 3pm—11pm, and 11pm—7am. Each CAN will work the eight (8) hour shift with one (1) hour of unpaid time comprised of two (2) fifteen minute breaks and one (1) thirty-minute meal.

ARTICLE 3. COMPENSATION

- 3.1 In consideration of the terms and obligations of this Agreement, the County agrees to pay, and the Contractor agrees to accept, an annual amount not to exceed ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00) (US CURRENCY). Total compensation under this agreement shall not exceed THREE HUNDRED THOUSAND AND 00/100 (\$300,000.00) DOLLARS.
- 3.2 The prices set forth in the Proposal shall remain fixed for the entire term of this Agreement and any renewals.
- 3.3 The County is not subject to federal, state, or local taxes.

ARTICLE 4. PAYMENT AND DELIVERY

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

ARTICLE 5. TERM OF THE AGREEMENT

The term of this Agreement shall commence on January 1, 2020 and continue in effect until December 31, 2022.

ARTICLE 6. TERMINATION OF AGREEMENT; REMEDY FOR BREACH

- 6.1 This Agreement may be terminated by the County or the Contractor as follows:
 - 6.1.1 The County may terminate this Agreement if the Contractor refuses or fails to supply enough properly skilled workers or proper materials to meet any of its

requirements, if the Contractor fails to make payment to County-approved subcontractors for materials or labor, or disregards laws, ordinances, or rules and regulations or orders of a public entity having jurisdiction over the work, or if the Contractor is substantially in breach of any of its provisions. Additionally, the County may, without cause, order the Contractor in writing, to suspend, delay, or interrupt the work in whole or in part for such period of time as the County may determine.

6.1.2 The Contractor may terminate this Agreement if the County is substantially in breach of it.

6.2 In the event of a breach by the Contractor, the Contractor 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 Contractor to satisfactorily complete the work, together with the County's own costs incurred in procuring a substitute Contractor.

ARTICLE 7. ASSIGNMENT

7.1 Pursuant to §109 of the General Municipal Law, the Contractor is prohibited from assigning, transferring, conveying, subcontracting, or otherwise disposing of this Agreement, or of its right, title, or interest therein, to any other person or entity without the prior written consent of the County.

7.2 The Contractor shall not subcontract for any portion of the services required under this Agreement without the prior written approval of the County. Any such subcontractor shall be subject to the terms and conditions of this Agreement and any additional terms and conditions the County may deem necessary or appropriate.

ARTICLE 8. AVAILABLE DATA

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

ARTICLE 9. COOPERATION

Contractor shall cooperate with the agents, representatives, and employees of the County and the County shall cooperate with the agents, representatives, and employees of the Contractor to ensure that the work delineated herein proceeds and concludes as expeditiously as possible.

ARTICLE 10. NON-DISCRIMINATION

In accordance with Article 15 of the Executive Law (also known as the Human Rights Law), and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor agrees that neither it nor its County-approved subcontractors shall, by reason of age, race, creed, color, national origin, sexual orientation, military status, sex, disability,

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predisposing genetic characteristics, or marital status refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions, or privileges of employment.

ARTICLE 11. EXTRA WORK

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

ARTICLE 12. COMPLIANCE WITH MACBRIDE PRINCIPLES

The Contractor 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 Contractor 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 its 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 § 4 of the said Local Law No. 3 for 1993 including, but not limited to, imposing sanctions, enforcing compliance, recovering damages, declaring the Contractor in default, and/or seeking debarment or suspension of the Contractor.

ARTICLE 13. IRANIAN ENERGY SECTOR DIVESTMENT

The Contractor hereby represents that the Contractor is in compliance with New York State General Municipal Law Section 103-g entitled "Iranian Energy Sector Divestment," in that Contractor has not:

- (a) Provided goods or services of \$20 Million or more in the energy sector of Iran including but not limited to the provision of oil or liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran; or
- (b) Acted as a financial institution and extended \$20 Million or more in credit to another person for forty-five days or more, if that person's intent was to use the credit to provide goods or services in the energy sector in Iran.

ARTICLE 14. RELATIONSHIP OF THE PARTIES

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

ARTICLE 15. INDEMNIFICATION

The Contractor shall defend, indemnify, and save harmless the County, its agents, representatives, and employees, from and against any and all claims, damages, losses, and expenses (including, but not limited to, reasonable attorney's fees) arising out of or in consequence of any negligent or intentional act or omission of the Contractor, its agents, representatives, or employees, to the extent of its or their responsibility for such claims, damages, losses, or expenses.

ARTICLE 16. INSURANCE COVERAGE

- 16.1 The Contractor 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.
- 16.2 The Contractor 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 Contractor shall also provide the County with updated Certificates of Insurance prior to the expiration of any previously-issued by the Contractor. No work shall be commenced under this Agreement until the Contractor has delivered the Certificates of Insurance to the County. Upon failure of the Contractor to furnish, deliver, and maintain such insurance certificates as provided above, the County may declare this Agreement suspended, discontinued, or terminated.
- 16.3 As required by Section 108 of the N.Y. General Municipal Law, this Agreement shall be of no force and effect unless the Contractor 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 Contractor shall require any subcontractor 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 17. NON-COLLUSIVE BIDDING

By execution of this Agreement, the Contractor warrants, under penalty of perjury, that to the best of their knowledge and belief, the prices communicated to the County in establishing the costs of goods and services covered in this Agreement have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition. The Contractor warrants that it is in compliance with NYS General Municipal Law Sec. 103-d with regard to the prices of goods and services covered in this Agreement.

ARTICLE 18. NO WAIVER OF PERFORMANCE

Failure of the County to insist upon strict and prompt performance of the provisions of this Agreement, or any of them, and the acceptance of such performance thereafter shall not constitute or be construed as a waiver or relinquishment of the County's right thereafter to enforce the same strictly according to the tenor thereof in the event of a continuous or subsequent default on the part of the Contractor.

ARTICLE 19. ACCOUNTING RECORDS

- 19.1 The Contractor shall maintain complete and proper accounting records that shall clearly identify all costs associated with and revenue derived from the work performed under this Agreement. Such records shall be subject to periodic and final audit by the County upon request.
- 19.2 The Contractor shall 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, immediately upon request.
- 19.3 The Contractor shall 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 and authorized State and/or Federal personnel during such period.

ARTICLE 20. PRIVACY OF PERSONAL HEALTH INFORMATION

In order to comply with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Contractor, (deemed a BUSINESS ASSOCIATE as defined at 45 CFR § 160.103), its employees, administrators and agents shall not use or disclose Protected Health Information (PHI), (as defined in 45 CFR § 160.103) other than as permitted or required by this Agreement with the County (deemed a Hybrid Entity as defined at 45 CFR § 160.103) or as Required By Law (as defined in 45 CFR § 164.103). The Contractor shall maintain compliance with all U.S. Department of Health and Human Services, Office for Civil Rights, policies, procedures, rules and regulations applicable in the context of this Agreement, as more particularly set forth in Schedule B, attached hereto and made a part hereof.

ARTICLE 21. NON-APPROPRIATIONS

Notwithstanding anything contained herein to the contrary, no default shall be deemed to occur in the event no funds or insufficient funds are appropriated and budgeted by or are otherwise unavailable to the County for payment under this Agreement. The County will immediately notify the Contractor 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 22. CHANGE IN LEGAL STATUS OR DISSOLUTION

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

ARTICLE 23. LICENSES

The Contractor 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.

ARTICLE 24. PARTIAL INVALIDITY

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.

ARTICLE 25. HEADINGS – CONSTRUCTION

The headings appearing in this Agreement are for the purpose of easy reference only and shall not be considered a part of the Agreement or in any way to modify, amend, or affect the provisions hereof.

ARTICLE 26. NOTICES

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.

ARTICLE 27. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

ARTICLE 28. MODIFICATION

This Agreement may only be modified by a formal written amendment executed by the parties.

ARTICLE 29. EXECUTION OF DOCUMENTS

This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement, but all of which together shall constitute one and the same instrument.

ARTICLE 30. STORMWATER MANAGEMENT PROGRAM

The Contractor specifically agrees to comply with the terms and conditions of the County's stormwater management program (SWMP) as set forth in Albany County Local Law No.7 for 2007 and further agrees to implement any corrective actions identified by the County or a representative. The Contractor understands that the County must comply with the conditions of the New York State Pollutant Discharge Elimination System (SPDES) general permit (GP-0-10-002) for stormwater discharges from the Municipal Separate Storm Sewer Systems (MS4s) and that it is unlawful for any person to directly or indirectly cause or contribute to a violation of water quality standards. The Contractor further understands that any non-compliance will not diminish, eliminate, or lessen the Contractor's own liability. The Contractor shall execute and deliver to the Count a certification statement prior to commencing any work.

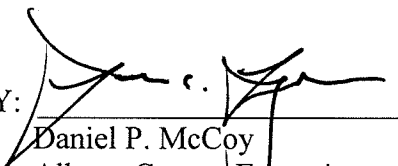
ARTICLE 31. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and no representations or promises have been made except as expressly set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) hereunder set forth.

COUNTY OF ALBANY

DATED: 1/10/20

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

CLINICAL STAFFING RESOURCES, INC.

DATED: 12-30-2019

BY: Nathan Landa

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

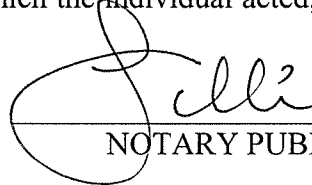
On the ____ day of _____, 20__, before me, the undersigned, personally appeared DANIEL P. McCOY personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, 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 10 day of January, 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.

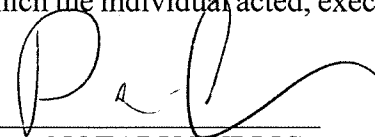
MICHAEL A. LALLI
NOTARY PUBLIC - STATE OF NEW YORK
No. 01LA6322012
Qualified in Albany County
My Commission Expires March 30, 2023.



NOTARY PUBLIC

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

On the 30th day of December, 2019, before me, the undersigned, personally appeared Nathan Landau 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 s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



NOTARY PUBLIC

DESMONDE L CARTER
NOTARY PUBLIC, State of New York
No. 01-CA6244992
Qualified in Kings County
Commission Expires 07/18/20
DESMONDE L CARTER
NOTARY PUBLIC, State of New York
No. 01-CA6244992
Qualified in Kings County
Commission Expires 07/18/2021

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.
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 there from, 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 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	\$1,000,000.00
Property Damage	\$1,000,000.00
Personal Injury	\$1,000,000.00

SCHEDULE B

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/CONTRACTOR 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 Contractor.
2. "Covered Entity" – for purposes of this Agreement, the term "Covered Entity" shall mean the County of Albany, The Shaker Place Rehabilitation and Nursing Center, and any part thereof.
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. "Subcontractor" – shall have the same meaning as the term "subcontractor" 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 subcontractor, 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 January 1, 2020 until December 31, 2022. 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 Schedule B, 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 Schedule B, 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 Schedule B 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 Schedule B are hereby incorporated into the Agreement between the parties hereto.