



Better Health

for Northeast New York

A Partnership for Better Health

Temporary Housing Assistance Program Agreement

This Temporary Housing Assistance Program Agreement (this "Agreement") is entered into and made effective as of August 1, 2020 ("Effective Date"), by and between Better Health for Northeast New York, Inc. ("BHNNY"), located at 1275 Broadway MC-216, Albany, New York 12204, and the County of Albany ("Albany County"), on behalf of the Albany County Sheriff's Office ("ACSO"). Each may be referred to as a "Party" or collectively as the "Parties."

Recitals

A. The New York State Department of Health ("DOH") has approved BHNNY to serve as the lead of a Performing Provider System ("PPS") under the New York State Delivery System Reform Incentive Payment Program ("DSRIP") to serve individuals enrolled in Medicaid and uninsured individuals in the counties of Albany, Columbia, Greene, Saratoga and Warren ("BHNNY Service Area").

B. Among other DSRIP projects and activities, BHNNY has elected to undertake a project to address the need for housing in Albany County. The goal of the Temporary Housing Assistance Program is to provide temporary housing and other assistance to individuals to address needs that can impact health, health outcomes, and healthcare utilization.

C. ACSO has established the Sheriff's Homeless Improvement Project ("SHIP") to provide temporary housing to homeless males age 18 or older in Albany County. ACSO wishes to participate in the Temporary Housing Assistance Program and has agreed to collaborate with BHNNY and other organizations in the BHNNY network ("BHNNY Network").

D. The Parties agree that ACSO is well-positioned to assist with the development and implementation of the Temporary Housing Assistance Program.

E. The Parties agree that improved access to housing, along with assistance with and access to other existing resources and services would benefit patients, potentially reduce preventable ER use, hospital admissions and readmissions, and advance DSRIP goals.

AGREEMENT

In consideration of the foregoing, the mutual covenants contained herein and for purposes of furthering immediate implementation of the Temporary Housing Assistance Program, the Parties agree as follows:

ARTICLE I DEFINITIONS

The terms used in this Agreement shall have the following meanings.

1. "CMS" means the Centers for Medicare and Medicaid Services.

2. **"Compliance Program"** means the program established by BHNNY to prevent, detect, and address compliance issues that arise with respect to PPS operations, projects or activities.
3. **"DSRIP Requirements"** means the requirements of DSRIP as set forth in DOH or CMS regulations, guidelines, and guidance statements, as amended from time to time.
4. **"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended by the Health Insurance Technology for Economic Clinical Health Act (HITECH) and any regulations, rules, and guidance issued pursuant to HIPAA and the HITECH Act.
5. **"Partner Organizations"** means organizations that have executed an agreement to participate in the PPS as a Partner Organization.
6. **"PHI"** means Protected Health Information as defined under HIPAA.
7. **"PPS"** has the meaning set forth in Recital A and includes the network of health care providers, community-based organizations, vendors, and state or municipal agencies that participate in PPS projects, operations, or activities to implement the PPS Project Plan and meet DSRIP goals.
8. **"PPS Policies and Procedures"** means policies and procedures duly adopted by BHNNY.

ARTICLE II BHNNY OBLIGATIONS

Section 2.1. BHNNY Obligations. BHNNY shall oversee the Temporary Housing Assistance Program, including but not limited to tracking project performance, and reporting as required by DSRIP to DOH.

Section 2.2. Payment. BHNNY shall pay Albany County in accordance with the payment terms in Article IV below.

ARTICLE III ALBANY COUNTY OBLIGATIONS

Section 3.1. Services To Be Performed. ACSO shall assess and provide temporary housing for individuals who have been referred to the SHIP by an identified BHNNY PPS Partner Organization. Such services will specifically include the provision of temporary housing in the form of a single room within the facility established by the SHIP. Such services shall be delivered in accordance with generally accepted standards of practice and applicable federal, state, and local laws and regulations.

- a. Referrals. Referrals to the SHIP must be received in writing from a BHNNY Partner Organization. Referrals must be evaluated using the screening tool provided by BHNNY and accepted 7 days a week and at least 8 hours per day.
- b. Care Management Services. ACSO will use a variety of strategies to identify, engage, and drive the individual towards appropriate and

sustainable housing and healthcare utilization, including but not limited to the following tasks:

- Ensuring health insurance enrollment linking individuals to insurance navigators, as required.
- Establishing primary care physicians for individuals, or re-establishing communications and treatment with a primary care team.
- Supporting individuals in obtaining all prescribed medications, including securing medications and establishing a local, accessible pharmacy for provision of prescriptions and prescription education.
- Completing a Health Home referral for applicable individuals.
- Evaluating and coordinating an individual's need for additional medical care (e.g., home care).
- Evaluating and coordinating an individual's need for additional behavioral health treatment (e.g., substance abuse counseling).
- Evaluating and coordinating an individual's need for services that directly address outcome-driven social determinants of health needs.
- Assisting individuals in applying for income benefits and support.
- Providing education and access regarding transportation resources.
- Initiating housing applications.
- Developing and actively updating a formal transition plan for all individuals.

- c. Temporary Housing. All referrals for temporary housing in the SHIP will be authorized for an initial period of 60 days. Requests for extension of service beyond 60 days must be submitted and approved in form and process provided by BHNNY.

Section 3.2. Reporting. ACSO will report to BHNNY as specified in Exhibit A. Albany County understands that BHNNY will rely on the information submitted by ACSO in submitting reports to DOH and agrees that all data, reports and documentation submitted by ACSO under this Agreement shall be accurate and complete.

Section 3.3. Compliance. In providing services pursuant to this Agreement, Albany County shall comply with all applicable laws and regulations.

ARTICLE IV PAYMENT TERMS

Section 4.1. BHNNY shall pay Albany County a per diem rate of \$137 per individual occupied room per day, up to a maximum amount of \$376,815 over the term of this Agreement and upon the submission of itemized invoices. Invoices must be generated no more frequently than monthly, and must reconcile to the Service Occupancy Report as described in Exhibit A. Albany County agrees to use the funds only for the purpose pursuant to this Agreement, and for no other purpose.

Section 4.2. Notwithstanding anything to the contrary in this Agreement, in the event that it becomes possible for Albany County to be compensated for any of the services provided by ACSO pursuant to this Agreement, by Medicaid or any other third-party payer, Albany County and BHNNY agree to enter into a mutually acceptable amendment to this Agreement to reduce the compensation payable pursuant to Section 4.1 by the amount of such compensation that Albany County is able to receive from Medicaid or any other third-party payer.

ARTICLE V BUSINESS ASSOCIATE AGREEMENT

Section 5.1. Business Associate Agreement. The Parties will enter and be bound by a reciprocal Business Associate Agreement ("BAA") that will govern the sharing of PHI under this Agreement. This Agreement shall be interpreted and applied by the Parties as an addendum to the Partner Organization Agreement.

ARTICLE VI TERM AND TERMINATION

Section 6.1. Term. This Agreement shall commence on the Effective Date and shall terminate on April 30, 2021.

Section 6.2. Termination by BHNNY. BHNNY may terminate this Agreement in the event that:

- a. Albany County breaches a material term of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice from BHNNY regarding the breach (or such other longer cure period as BHNNY deems reasonable under the circumstances);
- b. Upon thirty (30) days' written notice, if BHNNY fails to receive sufficient DSRIP Funds from DOH to meet its financial obligations, except that in the event this clause is triggered, the Parties may renegotiate the terms of this Agreement to provide for partial payment and partial delivery of services; or
- c. Upon twenty-four (24) hours' written notice to ACSO if any license, certification or government approval of ACSO material to its performance under this Agreement is suspended, terminated, revoked, or surrendered.

Section 6.3. Termination by Albany County. Albany County may terminate this Agreement in the event that BHNNY breaches a material term of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice from Albany County regarding the breach (or such other longer cure period as Albany County deems reasonable under the circumstances). In addition, Albany County may terminate this Agreement upon twenty-four (24) hours' written notice to BHNNY, if BHNNY is suspended or excluded from DSRIP or the New York State Medicaid Program.

Section 6.4. Termination Without Cause. This Agreement may be terminated by either party, at any time, without cause, upon thirty (30) days' prior written notice. BHNNY shall pay for satisfactory Services performed prior to the effective date of the termination.

ARTICLE VII DATA USE AND CONFIDENTIALITY

Section 7.1. Business Associate Agreement. The Parties agree that in order to implement the Temporary Housing Assistance Program, they will need to exchange PHI, which shall be governed by the reciprocal BAA noted above.

Section 7.2. Duty to Protect Confidential Medical Information. The Parties agree that they will only use and share PHI with one another and, as necessary, other providers in the BHNNY Network in a manner consistent with: (i) HIPAA; (ii) Part 2 Substance Use Disorder Treatment requirements; (iii) all other applicable state and federal laws and regulations; (iv) DSRIP program guidance issued by DOH or CMS; (v) the Business Associate Agreement noted in Section 5.1; and (vi) applicable PPS Policies and Procedures. To the extent legally required, or required by PPS Policies and Procedures, Albany County shall seek any necessary consent from Eligible Patients in order to share data to provide the services pursuant to this Agreement and to meet DSRIP performance goals.

ARTICLE VIII RECORD RETENTION

Section 8.1. Obligation to Maintain Records. The Parties shall maintain and retain operational, financial, administrative, and medical records, and other documents related to the subject matter of this Agreement in accordance with applicable law and DSRIP Requirements and PPS Policies and Procedures.

ARTICLE IX REPRESENTATIONS AND WARRANTIES

Section 9.1. Representations and Warranties of BHNNY. BHNNY hereby represents and warrants to Albany County that neither BHNNY, nor any of its employees, agents, or contractors who will perform services pursuant to this Agreement, are excluded from participation in Medicare or Medicaid or any other federal or state health insurance program.

Section 9.2. Representations and Warranties of Albany County. Albany County hereby represents and warrants to BHNNY that:

- (a) Neither Albany County nor any of its subsidiaries, parent entities, employees, agents, or contractors are excluded from participation in the Medicare or Medicaid programs or any other federal or state health insurance program; and
- (b) Albany County's ability to provide health care services in New York State or any other jurisdiction is not now revoked, limited, suspended, or otherwise restricted in any manner.

ARTICLE X INDEPENDENT CONTRACTORS

Section 10.1. Legal Relationship. BHNNY and Albany County understand and agree that the Parties intend to act and perform their respective obligations under this Agreement and DSRIP as independent contractors and that neither BHNNY nor Albany County is an employee, partner, or joint venturer of the other.

**ARTICLE XI
LEGAL COMPLIANCE**

Section 11.1. Compliance with Laws and Policies. In carrying out the terms of this Agreement, both Parties shall comply with all applicable federal, state and local laws, regulations and rules, DSRIP Requirements, and the BHNNY Compliance Program.

**ARTICLE XII
INDEMNIFICATION AND LIMITATION OF LIABILITY**

Section 12.1. Indemnification. Each Party agrees to indemnify the other Party and its officers, directors, employees, agents, and subsidiaries for any and all claims, losses, liabilities, costs and expenses, including reasonable attorneys' fees and costs asserted or incurred in connection with the indemnifying Party's (a) failure to perform its obligations under this Agreement; (b) negligent acts or omissions in carrying out services and obligations under this Agreement, or (c) violation of any law, statute, regulation, rule or standard of care. This indemnification obligation shall survive the termination of this Agreement. Neither Party shall indemnify the other Party for the negligent acts or omissions of any other Partner Organization or any other third party.

**ARTICLE XIII
NOTICE**

Section 13.1. Delivery of Notice. Except as otherwise specified herein, all notices under this Agreement shall be in writing and shall be delivered personally, mailed by first-class, registered or certified mail, return receipt requested or via email:

If to BHNNY:

Attn: Louis Filhour
Chief Executive Officer
1275 Broadway
Albany, NY 12204
Email: FilhouL@amc.edu

If to Albany County:

Attn: Sheriff Craig D. Apple
Albany County Sheriff's Office
16 Eagle Street
Albany, NY 12211

and Albany County Attorney
112 State Street, Room 600
Albany, NY 12207

Section 13.2. Change of Notice Recipient. Each Party may designate in writing a new address to which any notice shall be delivered.

**ARTICLE XIV
GENERAL PROVISIONS**

Section 14.1. Amendment. This Agreement may only be amended, altered, or modified by a written agreement executed by the Parties, except: (i) for the Reporting Schedule as set forth

in Exhibit A, which may be amended by BHNNY from time to time by reasonable advance written notice to Albany County; and (ii) if changes to DSRIP Requirements mandated by CMS or DOH require amendment of this Agreement, BHNNY may amend this Agreement to the extent necessary to comply with such DSRIP Requirements and shall promptly notify Albany County in writing of such amendments.

Section 14.2. Assignment. This Agreement may not be assigned by either Party without the prior written consent of the other Party.

Section 14.3. Entire Agreement. This Agreement supersedes all prior oral or written agreements, commitments, or understandings between the Parties with respect to the matters provided for herein, except that this Agreement shall not override or nullify the Business Associate Agreement entered into by the Parties to the extent the agreement is applicable.

Section 14.4. Waivers. The rights and remedies of the Parties hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. This Agreement may be waived only pursuant to an agreement or agreements in writing entered into by the Parties.

Section 14.5. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of New York without regard to its conflicts of law rules.

Section 14.6. Non-Discrimination. Access to services under this Agreement will be based solely on criteria of prognosis and need for care and not on the basis of race, age, sex, color, religion, national origin, marital status, sexual orientation, disability, sponsorship, source of payment or other similar criteria.

Section 14.7. Non-Exclusivity. Nothing in this Agreement shall prohibit either Party from affiliating or contracting with any other entity for any purpose whatsoever.

Section 14.8. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 14.9. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging shall be effective as delivery of a manually executed counterpart of this Agreement.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

THE COUNTY OF ALBANY

By: _____
Name: _____
Title: _____
Date: _____

**BETTER HEALTH FOR NORTHEAST NEW
YORK, INC.**

By: _____
Louis Filhour
Chief Executive Officer
Date: _____



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Exhibit A **Reporting Requirements**

ACSO will document all referrals, screenings, interactions and discharge discussions in a format or template provided by BHNNY.

ACSO will submit monthly Service Occupancy reports including the following client-level information for clients served in the prior month in a format or template provided by BHNNY:

- Name
- Referral Source
- Insurance Type
- Service Provided
- Referrals Made

ACSO will also submit monthly, in format or template as provided by BHNNY which includes the following information:

- Number of clients enrolled in a Medicaid Managed Care Plan or other insurance program,
- Number of clients who have identified having a Primary Care Provider and who have had a primary care visit within the last year,
- Number of clients participating in a Substance Abuse Treatment program and the number of clients that should have been,
- Number of clients participating in a Behavioral Health Services and the number of clients that should have been,
- Number of clients participating in a Health Home and the number of clients that should have been,
- Number of clients provided affordable and supportive housing and the number of clients who needed housing,
- Number of clients achieving food security and the number of clients that needed food (enrollment SNAP, engagement in pantry assignment, nutritional counseling)
- Number of clients receiving transportation coordination services and the number who needed transportation,
- Number of clients receiving education, training and/or job assistance and the number who needed education, training and/or job assistance.
- Number of clients who received assistance in securing public benefits (TANF, VA, SSD, SSI, Worker's Compensation, Unemployment, Pension ...) and the number of clients that needed these benefits,
- Number of clients receiving Narcan and/or participating in needle exchange program and the number of clients who needed the service/program but did not participate when offered.

Monthly Reports must be submitted by the 10th of the month, following the month of service. Additional information regarding required documentation and submission requirements are detailed in documentation provide by BHNNY.



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Exhibit B: Extension of temporary housing for referred individuals through the Sheriff's Homeless Improvement Project (SHIP)

SHIP staff will work diligently with all individuals to address their specific social determinants of health needs and other concerns that may be barriers to them achieving positive health outcomes and obtain stable, long term housing in their community of choice. BHNNY realizes that because of client need, programmatic need, and/or process timelines for achieving stable housing, extensions of time in the program may be needed beyond the initial 60-day period.

In the specified circumstances, SHIP staff may request a temporary housing extension by employing the following steps:

1. A BHNNY Request for Extension form is completed. This includes a reason for the extension request and the individual's signature, indicating his/her need for additional time in the program.
2. The form is transmitted to the BHNNY PMO office via MoveIT at least 7 days prior to the individual's anticipated planned discharge date.
3. BHNNY's Chief Medical Officer, or designee, approves or denies the request and the response is sent to SHIP personnel within 2 business days. Efforts will be made for a same day response, when possible.
4. As part of this contract, SHIP commits to a regular review of extension requests, with quarterly reports to BHNNY. The aim of the review processes is to assess and respond to any barriers that may be in the way of individuals discharging in the prescribed timeframe.



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BHNNY – Sheriff's Homeless Improvement Project (SHIP) Request for Extension of Services Form

I. Shelter Resident Information			
First Name:		Last Name:	
DOB:		Admission Date:	
(Original) Planned Discharge Date:			
Admission Reason(s):			
<i>I agree to this request for an extension of services. I agree that more time in the SHIP program will help me to obtain stable housing and help me address any of my health issues.</i>			
Shelter Resident Signature: _____			

II. Extension of Services Request Information	
Reason for Request:	
Additional Detail Related to Extension Request:	
Requested (Revised) Discharge Date:	
Requested Submittal Date:	
Program Director – Name:	
Signature:	_____
Date signed:	

III. Extension of Services Request – Response / BHNNY – Chief Medical Officer	
Service Extension – Response:	
Service Extended Through (Date):	
Chief Medical Officer (or designee)	Kallanna Manjunath, MD, FAAP, CPE
Signature:	_____
Date of Signature:	
Comments:	



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BHNNY – Sheriff's Homeless Improvement Project (SHIP) Request for Extension of Services Form

I. Shelter Resident Information			
First Name:		Last Name:	
DOB:		Admission Date:	
(Original) Planned Discharge Date:			
Admission Reason(s):			
<i>I agree to this request for an extension of services. I agree that more time in the SHIP program will help me to obtain stable housing and help me address any of my health issues.</i>			
Shelter Resident Signature: _____			

II. Extension of Services Request Information	
Reason for Request:	
Additional Detail Related to Extension Request:	
Requested (Revised) Discharge Date:	
Requested Submittal Date:	
Program Director – Name:	
Signature:	_____
Date signed:	

III. Extension of Services Request – Response / BHNNY – Chief Medical Officer	
Service Extension – Response:	
Service Extended Through (Date):	
Chief Medical Officer (or designee)	Kallanna Manjunath, MD, FAAP, CPE
Signature:	_____
Date of Signature:	
Comments:	

RECIPROCAL BUSINESS ASSOCIATE AGREEMENT BETWEEN BHNNY AND THE COUNTY OF ALBANY

THIS BUSINESS ASSOCIATE AGREEMENT (this "Agreement") is entered into and made effective as of April 1, 2020 (the "Effective Date"), by and between BETTER HEALTH FOR NORTHEAST NEW YORK, INC. ("BHNNY" or "Covered Entity"), and THE COUNTY OF ALBANY ("Albany County" or "Business Associate"), the municipal corporation within which the Albany County Sheriff's Office ("ACSO") is a department/office, each a "Party" and collectively the "Parties." This Agreement applies to the extent that HIPAA (as defined below) and HITECH (as defined below) apply to BHNNY and Albany County. Nothing in this Agreement shall be construed to expand the applicability of HIPAA or HITECH to the Parties hereto.

WHEREAS, BHNNY is the lead entity of a Performing Provider System ("PPS") for purposes of the New York State Delivery System Reform Incentive Payment Program ("DSRIP") and, along with its participating partner organizations ("Partner Organizations"), has developed and is implementing the BHNNY DSRIP Project Plan to achieve DSRIP goals, which includes, among other things, creation of an integrated delivery system;

WHEREAS, BHNNY has engaged ACSO to perform certain services as set forth in an Agreement (the "Services Agreement");

WHEREAS, BHNNY is not a Covered Entity as defined by HIPAA but is a Business Associate of Partner Organizations and DOH, and the Parties recognize that for purposes of this Agreement Albany County shall carry out all the responsibilities of a Business Associate as defined by HIPAA and as set forth in this Agreement;

WHEREAS, for purposes of this Agreement, BHNNY's obligations are the same as those of a Covered Entity;

WHEREAS, the Parties hereby agree to all of the terms, covenants and conditions set forth below with respect to any current or future agreements between BHNNY and Albany County in which ACSO creates, receives, maintains, or transmits Protected Health Information (or "PHI") from, or on behalf of, BHNNY. The terms, covenants and conditions of this Agreement shall supplement and/or amend each agreement between the Parties and are hereby incorporated by reference and shall constitute an integral part of any agreement between the Parties only with respect to Albany County's use, disclosure and creation of PHI in underlying agreements; and

WHEREAS, BHNNY and Albany County desire to enter into this Agreement in order to comply with Applicable Privacy and Security Laws;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereto agree as follows:

1. **Recitals.** The terms of the recitals set forth above are hereby incorporated by this reference into this Agreement.

RECIPROCAL BUSINESS ASSOCIATE AGREEMENT BETWEEN BHNNY AND THE COUNTY OF ALBANY

2. Definitions. The following terms used in this Agreement shall have the same meaning as those terms in the "HIPAA Rules": Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

3. Specific definitions.

- a. "HIPAA Rules" shall mean the General Administrative, Privacy and Security Rules at 45 CFR Part 160 and Part 164.
- b. "Applicable Privacy and Security Laws" means HIPAA and all other applicable federal, state and local laws and regulations that govern the creation, storage, receipt or transmission of individually identifiable medical records or information.

4. Obligations and Activities of Business Associate. Business Associate agrees to:

- a. Not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law or in a manner that would violate the requirements of the HIPAA Rules. Business Associate shall not de-identify Covered Entity's PHI unless specifically granted such authority in writing as necessary to perform services for the benefit of Covered Entity.
- b. Use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of the information other than as provided for by the Agreement.
- c. Report to Covered Entity's Chief Compliance Officer within five (5) business days any unauthorized access, use or disclosure of PHI, intentional or unintentional, not provided for by the Agreement of which it becomes aware, including Breaches of Unsecured PHI as required at 45 CFR 164.410 and any security incident of which it becomes aware; provided, however, that the parties acknowledge and agree that this subparagraph (c) constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence or attempts of Unsuccessful Security Incidents for which no additional notice to Covered Entity shall be required. "Unsuccessful Security Incidents" means, without limitation, Internet Control Message Protocol (ICMP) traffic and other broadcast attacks on Business Associate's firewall including but not limited to, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI or appears to be part of an organized attack upon Business Associate's systems.

In the event of a Breach of Unsecured PHI, such notice shall be in writing and include, to the extent possible: the identification of each individual(s) whose Unsecured PHI has been, or is reasonably believed by the Business Associate to have been, acquired,

RECIPROCAL BUSINESS ASSOCIATE AGREEMENT BETWEEN BHNNY AND THE COUNTY OF ALBANY

accessed, used or disclosed; a description of what happened including the date of the Breach, the date of the discovery of the Breach and the unauthorized person who used the PHI or to whom the disclosure was made; a description of the Unsecured PHI involved in the Breach including types of identifiers and the likelihood of re-identification; whether the PHI was actually acquired or viewed; a description of the actions the Business Associate is taking to investigate the Breach, mitigate harm to individuals, and protect against further Breaches.

Information not contained in the initial notice of Breach, shall be included in a follow-up notice or notices as soon as possible, but in no event later than sixty (60) calendar days of when Business Associate knew, or by exercising reasonable diligence would have known, of the Breach. Business Associate will fully cooperate with Covered Entity to allow Covered Entity to meet its obligation of Breach Notification. Covered Entity shall be responsible for making Breach Notifications pursuant to the HIPAA Rules.

- d. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to the PHI.
- e. Make available PHI in a Designated Record Set to the Covered Entity within five (5) business days of receiving a request for access from the individual, or Covered Entity, as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524.
- f. Make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526 within five (5) business days of receiving a request from Covered Entity and to forward any direct requests for amendment made by an individual to Covered Entity within five (5) business days, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526.
- g. Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity within five (5) business days of receiving a request from the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528.
- h. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
- i. Make its internal practices, books, and records available to the Secretary, and upon reasonable notice to Covered Entity, for purposes of determining compliance with the HIPAA Rules.

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5. Permitted Uses and Disclosures by Business Associate.

- a. Business Associate may only use or disclose PHI as necessary to perform the services set forth in the underlying agreement.
- b. Business Associate may use or disclose PHI as Required by Law.
- c. Business Associate agrees to make uses and disclosures and requests for PHI consistent with minimum necessary requirements under the HIPAA Rules.
- d. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity except for the specific uses and disclosures set forth below:
- e. Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.

6. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

7. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity except if the Business Associate will use or disclose PHI for management and administration and legal responsibilities of the Business Associate.

8. Indemnification.

- a. Albany County agrees to indemnify, defend and hold harmless BHNNY and its respective corporate affiliates, officers, directors, and employees for any and all claims, losses, liabilities, costs and expenses incurred by BHNNY arising from or in connection with: (i) Albany County's failure to perform its obligations under this Agreement; (ii) willful misconduct, negligent acts or omissions of Albany County, or any contractor or agent of Albany County in carrying out the obligations under this Agreement or a subcontract Business Associate Agreement; or (iii) violation of Applicable Privacy and Security Laws as provided by BHNNY, by Albany County, or any agent or contractor of Albany County. This indemnification obligation shall survive termination of this Agreement.

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- b. Albany County agrees to indemnify, defend and hold harmless BHNNY and its respective corporate affiliates, officers, directors, and employees for any and all claims, losses, liabilities, costs and expenses incurred by BHNNY as a result of claims, losses, liabilities, costs and expenses of Partner Organizations, including but not limited to reasonable attorneys' fees and the costs of Breach notification and mitigation, arising from or in connection with Albany County's willful misconduct.
 - c. The obligations of this Section 8 shall survive termination of the Agreement.
9. Term and Termination.
- a. Term. The Term of the Agreement shall be effective as of the date of execution of the underlying agreement(s) by both Parties, and shall terminate on the date of completion of all deliverables associated with the underlying agreement(s) or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
 - b. Termination for Cause. Upon learning of a pattern of activity or practice of Albany County that constitutes a material breach or violation of Albany County's obligation under this Agreement, BHNNY may either:
 - i. Provide Albany County with notice of and the opportunity to cure the breach or end the violation, as applicable, within a reasonable period of time but not later than twenty (20) days from notice and, if such steps are unsuccessful, terminate the Service Agreement and this Agreement, if feasible; or
 - ii. Terminate the Service Agreement and this Agreement immediately, if feasible.
 - iii. Either Party may terminate this Agreement; effective immediately, if (i) the other Party is named as a defendant in a criminal proceeding for a violation of the Privacy Rule or (ii) a finding or stipulation that the other Party has violated any standard or requirement of Applicable Privacy and Security Laws is made in any administrative or civil proceeding in which the Party has been joined.
 - c. Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:
 - i. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

RECIPROCAL BUSINESS ASSOCIATE AGREEMENT BETWEEN BHNNY AND THE COUNTY OF ALBANY

- ii. Return to Covered Entity, or at the direction of Covered Entity and in compliance with HIPAA Rules, destroy the remaining PHI that the Business Associate still maintains in any form;
 - iii. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent, access, use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI; and
 - iv. Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out in Section 5 above under "Permitted Uses and Disclosures" which applied prior to termination.
 - d. Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.
10. Miscellaneous.
- a. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
 - b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
 - c. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
 - d. Order of Precedence. In the event of any inconsistency between any provision of this Business Associate Agreement and the provisions of any other agreement, the order of interpretation shall be this Business Associate Agreement and then any other agreements.

**RECIPROCAL BUSINESS ASSOCIATE AGREEMENT
BETWEEN BHNNY AND THE COUNTY OF ALBANY**

Better Health for Northeast New York, Inc.

Albany County

By: _____
Signature

By: _____
Signature

Louis Filhour, PhD, RN
Name

Name

Chief Executive Officer
Title

Title

Date

Date