

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE ALBANY COUNTY DEPARTMENT OF SOCIAL SERVICES
AND
THE ALBANY COUNTY DEPARTMENT OF MENTAL HEALTH
FOR THE CMU PROGRAM**

PURSUANT TO RESOLUTION NO. 352, ADOPTED 10/11/2022

This is an Agreement by and between the Albany County Department of Social Services (hereinafter referred to as the "Department of Social Services") with offices located at 162 Washington Avenue, Albany, New York 12210, and the Albany County Department of Mental Health (hereinafter referred to as the "Department of Mental Health") with offices located at 175 Green Street, Albany, New York 12202.

WITNESSETH:

WHEREAS, the Albany County Departments of Social Services and Mental Health are working in partnership in order to promote goals of sobriety and self-sufficiency for persons who engage in alcohol/substance abuse; and

WHEREAS, the Albany County Departments of Social Services and Mental Health are working in partnership to promote the goal of self-sufficiency of persons who demonstrate mental health problems; and

WHEREAS, The Welfare Reform Act of 1997 requires local social service districts to screen and assess applicants/recipients of Temporary Assistance for alcohol/substance abuse; and

WHEREAS, the Commissioner of Social Services of the County of Albany, hereinafter called the Commissioner, is an authorized social services official charged with the responsibility, insofar as funds are available for that purpose, to administer such care, treatment and services that may be necessary to restore persons unable to maintain themselves to a condition of self-support or self-care, pursuant to the Social Services Law of the State of New York; and

WHEREAS, Albany County Department of Mental Health has the capacity and expertise to perform the required alcohol/substance abuse assessments:

NOW, THEREFORE, the parties, recognizing their mutual interest in serving individuals demonstrating alcohol/substance abuse as a barrier to self-sufficiency, do enter into this Agreement governing the cooperative relationship and defining their respective roles and responsibilities.

**ARTICLE I. SCOPE OF SERVICES FOR ALCOHOL/SUBSTANCE ASSESSMENT
AND TREATMENT MONITORING SERVICES**

The Scope of Services to be performed with regard to the performance of alcohol/substance abuse employability assessments and monitoring of substance abuse treatment, as jointly administered by the Departments of Social Services and Mental Health via the Centralized Management Unit (CMU) is set forth in Exhibit 1 of this Agreement attached hereto and made a part hereof.

The respective roles and responsibilities of the Departments of Social Services and Mental Health, related to implementation of alcohol/substance abuse employability assessments, substance abuse treatment monitoring services are as follows:

The Department of Mental Health agrees to:

- a) Provide administrative and supervisory oversight of the performance of CMU Certified Alcohol Substance Abuse Counselors (CASACS) including the recruitment, hiring, training and supervision of all Department of Mental Health program staff.
- b) Provide two (2) CASACS to provide substance abuse assessments and monitoring of treatment compliance for temporary assistance and Medicaid recipients.
- c) Administer and manage the CMU forms/tools within the IMA Electronic Health Record (EHR) System.
- d) Provide DSS with the necessary training and concurrent user licenses to conduct scheduling and case collaboration within the IMA EHR system.
- e) Collaborate with the Department of Social Services to evaluate and modify procedures as appropriate to improve the outcomes and success of the CMU program.
- f) Assist the Department of Social Services in providing training and orientation information regarding substance abuse assessments and case management services to appropriate Social Services staff.
- g) Hold regular meetings with the Department of Social Services to review the progress of the services provided under this Agreement.
- h) Prepare and submit all required reports and claims related to the employability assessments conducted, substance abuse treatment monitoring and case management services provided.

The Department of Social Services agrees to:

- a) Provide administrative and supervisory oversight of the Department's performance under the program, including the recruitment, hiring, training and supervision of all Department of Social Services program staff.
- b) Collaborate with the Department of Mental Health to evaluate and modify procedures as appropriate to improve the outcomes and success of the CMU program.
- c) Cooperate in providing necessary orientation information to appropriate Department of Social Services and Department of Mental Health staff.
- d) Hold regular meetings with the Department of Mental Health to review and evaluate the services provided under this Agreement.
- e) Assist the Department of Mental Health in evaluating and monitoring the implementation of the services provided by this Agreement.

ARTICLE II. GENERAL PROVISIONS

The Department of Social Services shall be responsible for establishing the standards, policies and procedures for determining the eligibility of persons for whom the above services will be provided. The Department of Mental Health shall furnish such services in accordance with applicable requirements of law and shall cooperate with the County, as may be required so that the County and the New York State Department of Social Services will be able to fulfill their functions and responsibilities.

Both parties shall complete services in a timely manner to protect the interests and rights of the County to the fullest extent reasonably possible.

Each party will be fully responsible for the provision of all equipment and services for their respective staff, necessary to the performance of the requirements of this Agreement.

ARTICLE III. CONFIDENTIALITY

As part of this Agreement, the parties agree to safeguard the confidentiality of information relating to individuals who may receive services under the terms of this Memorandum of Understanding and shall maintain the confidentiality of all such information in conformity with the provisions of all applicable State and Federal laws and regulations. Further, to the extent it may be applicable, the Department of Mental Health agrees to abide by the terms and conditions of Appendix "A" attached hereto and made a part hereof regarding the Healthcare Insurance Portability and Accountability Act of 1996.

ARTICLE IV. INFORMATION ACCESS

As part of this Agreement, each party agrees to provide authorized County, 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 parties agree 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 County, State, and/or Federal personnel during such period.

As part of this Agreement, all technical or other data relative to the work pertaining to this Agreement in the possession of either party shall be made available to the other party to this Agreement without expense to the other party. All client records and other forms, reports, statistics and materials shall be retained by and at the respective Departments.

ARTICLE V. COOPERATION

The parties agree to work cooperatively in order that work may proceed expeditiously and economically, and to resolve any specific issues or difficulties that may arise in the course of implementation of the program of Alcohol/Substance Abuse Screening and Employability Assessment.

ARTICLE VI. GRIEVANCES AND FAIR HEARINGS

The Department of Social Services shall notify applicants for services and recipients of care and services of their right to a fair hearing to appeal the denial, reduction or termination of a service, or failure to act upon a request for services with reasonable promptness.

As part of this Agreement, the Department of Mental Health, upon the request of the Department of Social Services, shall participate in appeals and fair hearings as witnesses when necessary for a determination of the issues.

ARTICLE VII. FEES

In consideration of the terms and obligations of this Agreement, the Department of Social Services agrees to pay and the Department of Mental Health agrees to accept up to a maximum of **TWO HUNDRED AND TWENTY-EIGHTY THOUSAND 00/100 DOLLARS (\$228,000)** as full compensation for the Service described under this Agreement.

The Department of Mental Health agrees to use these funds to support the salary, fringe benefit and administrative costs of two (2) Certified Alcohol Substance Abuse Counselors (CASACS) dedicated to the provision of the alcohol/substance abuse employability assessment and treatment monitoring services (CMU), required UDS lab costs for clients; and the administration of the CMU forms/tools within the IMA Electronic Health Record (EHR) system and provide a sufficient number of concurrent user licenses as determined for DSS staff to access IMA for scheduling and case coordination with CMU. Any lab fees or administrative costs that remain unspent towards the end of the contract period can be claimed towards supervision and administrative support staff salary and fringe as long as the total expenditures for all costs under this MOU do not exceed the maximum amount.

Fees for the services provided shall be payable upon submission by the Department of Mental Health of signed County claim forms to the Department of Social Services. The claim forms or attached invoices must contain itemized detail of the staff salary, fringe benefit, administrative costs, and UDS lab costs associated with the direct provision of the above-described services. Claim forms/invoices must also provide a breakdown of the number of Safety Net and Family Assistance cases.

ARTICLE VIII. 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 Department of Social Services for payment. The Department of Social Services will immediately notify the Department of Mental Health of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were made without penalty or expense to the Department of Social Services of any kind whatsoever, except as to those portions herein agreed upon for which funds shall have been appropriated and budgeted.

ARTICLE IX. NON-DISCRIMINATION REQUIREMENTS

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 Subscriber agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (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 performance of work under this Agreement.

ARTICLE X. GOVERNING LAWS

This Agreement shall be governed by and construed according to the Laws of the State of New York.

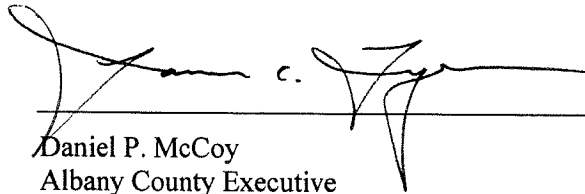
ARTICLE XI. TERM AND TERMINATION OF AGREEMENT

The term of this Agreement shall commence on January 1, 2023 and will continue in effect through December 31, 2023, provided however, that either party shall have the right at any time to terminate the service required by this Agreement by ninety (90) days written notice of such termination.

IN WITNESS WHEREOF, the parties have hereunto signed this Memorandum of Understanding on the date and year appearing opposite their respective signatures.

County of Albany

Date: 12/6/2022



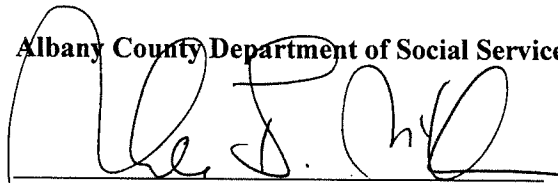
Daniel P. McCoy
Albany County Executive

or

Daniel C. Lynch
Deputy County Executive

Albany County Department of Social Services

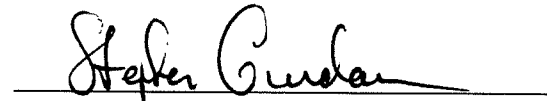
Date: 11/9/22



Michele G. McClave, Commissioner

Albany County Department of Mental Health

Date: 11/2/22



Stephen J. Giordano, Director

EXHIBIT 1

CMU Alcohol/Substance Abuse Employability Assessments Services

A. The Department of Social Services, through staff of the Temporary Assistance and Employment Divisions, will screen applicants/recipients of temporary assistance as designated under State law and regulation, for alcohol/substance abuse. Individuals whose screening indicates a need for assessment of their employability and for substance abuse treatment will be scheduled for an assessment appointment with the Managed Addiction Treatment Services Central Management Unit of the Department of Mental Health (hereinafter CMU).

B. The Department of Mental Health through the Central Management Unit (CMU) will complete assessments for all applicants who are identified on the Alcohol and Drug Abuse Screening and Referral Form (LDSS-4571), determine employability and where indicated refer such applicants to treatment. Of those referred to treatment, the CMU will follow through with service program linkage until compliant individuals are engaged into recommended treatment.

This requires the following:

For Department of Social Services Clients identified and scheduled for full assessments at the CMU

- Complete employability assessment
- Contact collaterals where indicated (e.g. client is currently engaged with treatment)
- If client is *unemployable* or *employable – treatment needed* determine appropriate level of care, and within appropriate clinical boundaries, determine treatment program with client
- Schedule intake appointment and notify client
- UDS screening as warranted
- Complete Recommendations form online to inform DSS of treatment recommendation
- Follow client through admission to treatment program or non-compliance with treatment recommendations
- Document admission or non-compliance by completing confirmation online to inform DSS of client status
- Reschedule any client who appears for their initial assessment appointment more than 15 minutes late for one (1) rescheduled date. Any further tardy appearances will be referred back to DSS
- DSS will provide CDTA bus swipers to eligible clients in the following manner:
 - Bus swipers will be distributed in quantities of 25 to Clinical Director of CMU from DSS Employment Unit
 - Bus swipers must be placed under lock and key with the Clinical Director of CMU or their designated representative
 - Bus swipers are for a single ride
 - A single bus swiper will be provided to CMU staff for distribution to clients as needed:
 - Clients may be provided a single bus swiper for the following reasons:
 - Initial reschedule of appointment
 - Initial intake appointment with local provider
 - DSS will provide a log of all bus swipers provided with each batch of 25 distributed to CMU. This log requires both client and CMU staff signature at the time a bus swiper card is dispersed.
 - Upon completion of the distribution of all 25 bus swipers, the completed log will be returned to DSS Employment Unit Director and Assistant Director
 - Email copy immediately

- Return original by inter office mail
- Request can be made by CMU Clinical Director or supervisor to DSS Director and Assistant Director by email for additional batch of 25 bus swipers when current log has 5 remaining bus swipers
 - Next batch of 25 CDTA bus swipers will be delivered by courier to CMU Clinical Director or their designated representative within 48 business hours. Receipt of this batch will require a signature by CMU Clinical Director or their designated representative.
- The Employment Unit Director and Assistant Director and CMU Clinical Director and supervisor will conduct periodic reviews of the bus swiper process. Either party may initiate a review of this process at any time with written request by either party.
- This bus swiper process is subject to termination with written request by either DSS or CMU Clinical Director or supervisor.
 - Any remaining bus swipers and log will be returned to DSS within 48 hours of termination

Paper Reviews

- Complete paper reviews for priority client admissions – approving referrals to treatment from treatment programs prior to face to face assessment with CMU assessor
- Document such paper reviews online to inform DSS of approval of Level of Care and treatment program
- Send such approvals to treatment programs to facilitate admissions

Level of Care Review

- Review all Alcohol and Substance Abuse Treatment Program Progress Reports (LDSS 4527) submitted to DSS on individuals in treatment to determine if the change in Level of Care identified by a provider is clinically appropriate
- Document outcome of review in IMA

Fair Hearings

- Assist Fair Hearing Unit by obtaining clinical, attendance or other documentation to support non-compliance or other DSS actions taken.

Access to Information

- In order to meet the requirements under 45 CFR Section 164.524 referenced in in Appendix A, and with Department of Social Services approval, Department of Mental Health will provide access to Protected Health Information in a Designated Record Set as outlined in Exhibit 2, directly to the client or the client's designee identified in an appropriate signed Release of Information form. Department of Mental Health will also provide Department of Social Services, as the owners of the records, at their request, with access to Protected Health Information for an individual(s).

Reports

Provide quarterly reports, if requested, to DSS to include the following but not limited to:

- Number of assessments performed
- Aggregate of Assessment outcomes

- Level of cares assigned
- Aggregate Status of employability
- Location of treatment programs
- Number of Clients who required Ongoing Level of Care Change Review
- Number of paper reviews for priority client admissions
- Number of approved referrals to treatment from treatment programs prior to face to face assessment with CMU assessor
- Number of Lab Tests conducted if applicable

EXHIBIT 2

CMU Alcohol/Substance Abuse Release of Information Approval Form

When a Request of Information (ROI) or FOIL request is received by the Department of Mental Health, the CMU Alcohol/Substance Abuse Release of Information Approval Form will be electronically completed by the designated Department of Mental Health staff person to identify which file records are being requested for release.

The Department of Mental Health will ensure that they have the required Releases on file from the client whose file records are being requested.

The Department of Mental Health will email the completed form to the Department of Social Services, Director and Assistant Director of Employment.

The Department of Social Services Director of Employment or Assistant Director of Employment will review the request and provide the necessary approval within one business day. The Approval Form must be printed by Department of Social Services so it can be signed and dated. Once signed and dated, the form will be scanned into the computer so it can be emailed back to the designated Department of Mental Health staff person. Original copies of the signed Approval Form will be kept in a file at the Department of Social Services.

CMU RELEASE OF INFORMATION APPROVAL REQUEST

Client Name:

Date of Request by Individual:

File Records* Requested:

- ☐ TRS-62- a Locadtr ROI
- ☐ Privacy Notice Sign off
- ☐ County Of Albany ROIs for any providers
- ☐ LDSS 4525 - Consent for Disclosure of Medical and Non-Medical Records from Alcoholism and Drug Abuse Treatment Programs
- ☐ LDSS 4571 – Alcohol and Drug Abuse Screening and Referral Form
- ☐ Notes printed from electronic health records with relevant data about the assessment or referral
- ☐ Client Data Sheet
- ☐ CMU rating form
- ☐ Dept. of Mental Health assessment
- ☐ Diagnostic Criteria worksheet
- ☐ CMU referral form
- ☐ CMU return for UDS result form
- ☐ Any additional correspondence to or from agencies that are designated on the LDSS 4525
- ☐ CMU “Recommendations” print out
- ☐ CMU “Confirmation” print out indicating where client is referred, whether the client was admitted or not, etc.
- ☐ CMU case notes

- ☐ Copies of any applicable attachments in electronic health records
- ☐ Locadtr form completed if indicated
- ☐ UDS results from Insta-Cups as utilized

***NOTE: 3RD Party Information in the Designated Record Set cannot be released to any other entity even if requested by the client.**

DEPARTMENT OF SOCIAL SERVICES APPROVAL

Based on Albany County Department of Mental Health's clinical determination of what is allowable to be released in an individual's record based on HIPPA Regulations and Mental Hygiene Law, Albany County Department of Social Services approves the release of the file record contents checked above to the client and/or entity the client has designated and has signed an appropriate ROI for.

DSS Name/Title: _____

DSS Signature: _____

Date:

APPENDIX A

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 Provider 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 Albany County Department of Mental Health.
2. "Covered Entity" – for purposes of this Agreement, the term "Covered Entity" shall mean the County and/or Albany County Department of Social Services.
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

- 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.
- 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).
- 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.

- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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 Social Service and/or 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 Social Service and/or 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, 2023 – December 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 Social Service and/or 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.