

**AGREEMENT  
BETWEEN THE COUNTY OF ALBANY  
AND THE ALTAMONT PROGRAM  
FOR START UP FUNDING FOR THE  
OPERATION OF LOW-BARRIER WARMING CENTER**

**PURSUANT TO RES. NO. 612 FOR 2023, ADOPTED DECEMBER 4, 2023  
(Contract No. 2024-1610)**

This Agreement is made by and between the County of Albany, a municipal corporation, acting by and through its County Executive, with its principal place of business located at the Albany County Office Building, 112 State Street, Albany, New York 12207-2021 (hereinafter, the "County") and The Altamont Program, Inc., with its principal place of business located at 428 Duane Avenue, Schenectady, New York 12304 (hereinafter, the "Provider," with the County, may be referred to herein individually as a "[P]arty" or together as the "[P]arties").

**WITNESSETH:**

**WHEREAS**, the Albany County Department of Social Services was seeking an agreement with a qualified vendor to operate one (1) low-barrier warming center, located at 45 South Ferry Street, Albany, New York 12202 for the County to protect homeless individuals from inclement winter weather when "real feel" temperatures decrease to 32 degrees or below, which is known as Code Blue. Code Blue was established through 18 CRR-NY 304.1 and the order requires that homeless individuals are directed and offered to move to shelter during inclement winter weather thus avoiding hypothermia, serious injury and death; and

**WHEREAS**, the Albany County Purchasing Division (hereinafter, the "Purchasing Division") has issued a request for proposals to operate one (1) low-barrier warming center, located at 45 South Ferry Street, Albany, New York 12202, said request having been denominated as RFP #2023-094R, issued by Purchasing Division on October 5, 2023, and published on October 5, 2023 (hereinafter, the "RFP"); and

**WHEREAS**, the Purchasing Division issued an addendum to the RFP on October 29, 2023 (hereinafter, the "Addendum"); and

**WHEREAS**, the Provider has submitted a proposal on November 3, 2023 to operate the low-barrier warming center (hereinafter, the "Proposal"); and

**WHEREAS**, the County has accepted the Proposal of the Provider to operate the low-barrier warming center; and

**WHEREAS**, the Albany County Legislature has authorized the County Executive to enter into an agreement with the Provider pursuant to Resolution No. 612 for 2023, adopted December 4, 2023 to provide one-time fit up and start-up costs for the aforesaid low-barrier warming center to become operational; and

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

**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; the RFP, which is incorporated by reference and made a part hereof; the Addendum, which is incorporated by reference and made a part hereof; and the Proposal, which is incorporated by reference and made a part hereof (collectively, may be referred to herein as “the Agreement”).

1.2 In the event of any discrepancy, disagreement or ambiguity among the Contract Documents, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity: 1) this Agreement; 2) the Addendum; 3) the RFP; 4) the Proposal.

## ARTICLE 2. SCOPE OF SERVICES

2.1 Consistent with the Addendum, the Provider shall operate a low-barrier warming center as described in the RFP in SECTION 4: SCOPE OF SERVICES, pages RFP-3 through RFP-7. The Provider shall comply with all of the requirements, provisions, terms and conditions, etc. contained/described in the RFP.

2.2 In addition to the Scope of Services described in Paragraph 2.1, above, the Provider shall provide the services described in the Proposal, in a manner consistent with the requirements, provisions, terms and conditions, etc. contained in the RFP, and the Addendum.

2.3 The Provider shall not perform any services beyond those described in the Proposal (hereinafter, the “extra service(s)”) unless it has obtained prior written approval from the County.

2.4 The Provider shall render all services in a professional manner.

## ARTICLE 3. COMPENSATION

3.1 In consideration of the terms and obligations of this Agreement, the County agrees to pay, and the Provider agrees to accept, an amount not to exceed ONE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$150,000.00) as full compensation for all services rendered under this Agreement.

3.2 The parties agree that the dollar amount identified in Paragraph 3.1 of this Agreement includes all expenses incurred providing the services and all travel costs, parking fees, overhead costs, profit and any other ancillary fees and costs including, but not limited to, permits, licenses and insurance.

## ARTICLE 4. PAYMENT

Payment shall be made to the Provider by the County on a monthly basis upon the Provider's submission of a properly executed Albany County Claim Form, plus all supporting documentation, to the Albany County Department of Social Services. Upon review and approval of the claim form, payment shall be rendered promptly.

## ARTICLE 5. TERM OF AGREEMENT

The term of this Agreement shall commence on December 1, 2023 and shall continue in effect through February 29, 2024.

## ARTICLE 6. TERMINATION OF AGREEMENT; REMEDY FOR BREACH

6.1 This Agreement may be terminated by the County or the Provider as follows:

6.1.1 The County may terminate the Agreement if the Provider is substantially in breach of any of its provisions. Additionally, the County may, without cause, order the Provider in writing, to suspend, delay or interrupt the services in whole or in part for such period of time as the County may determine.

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

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

## ARTICLE 7. ASSIGNMENT

7.1 The Provider specifically agrees as required by Section 109 of the N.Y. GENERAL MUNICIPAL LAW that the Provider is prohibited from assigning, transferring, conveying, subcontracting or otherwise disposing of this Agreement, or of the Provider's right, title, or interest therein, without the prior written consent of the County.

7.2 The Provider 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 relative to this Agreement in the possession of the County or in the possession of the Provider shall be made available to the other party to this Agreement without expense to the other party.

## ARTICLE 9. COOPERATION

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

## ARTICLE 10. NON-DISCRIMINATION

In accordance with Article 15 of N.Y. EXECUTIVE LAW (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Provider agrees that neither it nor any of its County approved sub-Providers shall, by reason of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence, 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. RELATIONSHIP

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

#### ARTICLE 12. INDEMNIFICATION

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

#### ARTICLE 13. 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 Provider 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 14. APPLICABLE LAW

The laws of the State of New York shall govern this Agreement. The designated venue is Albany, New York.

#### ARTICLE 15. RECORDS

Proper and full accounting records shall be maintained by the Provider which records shall clearly identify the costs of the services/work performed. The records shall be subject to periodic and final audit by the County upon request. Such records shall be accessible to the County for a period of six (6) years following the date of final payment.

#### ARTICLE 16. INSURANCE

16.1 The Provider 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 of Albany" as certificate holder and primary/non-contributory additional insured. Such policies may only be changed upon 30 days prior written approval by the County.

16.2 The Provider 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 Provider shall also provide the County with updated Certificates of Insurance prior to the expiration of any previously-issued certificate. No work shall be commenced under this Agreement until the Provider has delivered the Certificates of Insurance to the County. Upon failure of the Provider 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 Provider 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 Provider 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. 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 Provider.

#### ARTICLE 18. MODIFICATION

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

#### ARTICLE 19. 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 20. HEADINGS - CONSTRUCTION

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

#### ARTICLE 21. ENTIRE AGREEMENT

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

#### ARTICLE 22. COMPLIANCE WITH MacBRIDE PRINCIPLES

The Provider 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 the Provider 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 section 4 of Local Law No. 3 in 1993, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the Provider in default and/or seeking debarment or suspension of the Provider.

#### ARTICLE 23. EXTRA SERVICES/WORK

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

#### ARTICLE 24. IRANIAN ENERGY SECTOR DIVESTMENT

The Provider hereby represents that said Provider is in compliance with N.Y. GEN. MUN. LAW § 103-g entitled "Iranian Energy Sector Divestment," in that said Provider 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 45 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 25. STORMWATER MANAGEMENT PROGRAM

25.1 The Provider understands that Albany County is a regulated entity subject to the SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (GP-0-15-003), and must comply with the terms and conditions of the aforementioned Permit. Provider further understands that under the NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW, it is unlawful for any person to directly or indirectly cause or contribute to a violation of water quality standards, and that Albany County adopted Local Law 7 of 2007 enabling the County to take action against any discharges that cause or contribute to a violation of water quality standards. The Provider agrees to comply with the terms and conditions of the SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (GP-0-15-003) as well as Albany County Local Law No. 7 for 2007 and any Best Management Practices developed pursuant to the foregoing, as established in Albany County's Stormwater Management Program Plan. The Provider also agrees to implement any corrective actions identified by Albany County or a representative pursuant to the above regulations, and further understands that any non-compliance by the County will not diminish, eliminate, or lessen Provider's own liability.

25.2 The Provider shall execute and deliver to the County a certification statement acknowledging the above provisions prior to providing any services and/or commencing any work.

#### ARTICLE 26. GREEN INFRASTRUCTURE POLICY

The Provider acknowledge(s) awareness of Albany County's Green Infrastructure Policy, which is part of the County's larger MS4 Stormwater Management Program pursuant to SPDES GP-0-15-003 (hereinafter, the "Policy"). The Provider agree(s) to examine the feasibility of design options

involving protection of natural resources, reduction of stormwater runoff, and use of green infrastructure practices to the maximum extent practicable in accordance with the Policy.

#### ARTICLE 27. CONFIDENTIALITY REQUIREMENTS

The Provider shall observe all applicable Federal and State requirements relating to confidentiality of records and information, and shall not allow the examination of records or disclose information, except as may be necessary by the County to assure that the purpose of the Agreement will be effectuated, and also to otherwise comply with the County's requirements and obligations under law. Further, to the extent it may be applicable, the Provider herein 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 28. MISCELLANEOUS PROVISIONS

28.1 In addition to the Iranian Energy Sector Divestment (per N.Y. GEN. MUN. LAW § 103-9) described above, the Provider also acknowledges that it shall follow and all of the other policies and procedures contained/described in the RFP.

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

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

28.4 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.

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

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be signed  
the day and year first indicated below.

COUNTY OF ALBANY

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Daniel P. McCoy  
County Executive

*or*

Michael P. McLaughlin  
Deputy County Executive

**THE ALTAMONT PROGRAM, INC.**

DATED: \_\_\_\_\_ 1/30/24

BY: \_\_\_\_\_  
Name

COO  
\_\_\_\_\_  
Title



STATE OF NEW YORK )  
COUNTY OF ALBANY ) SS:

On the \_\_\_\_\_ day of \_\_\_\_\_, 2024, 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

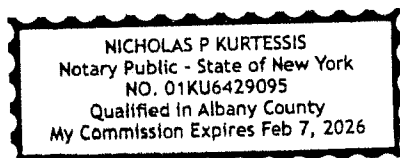
STATE OF NEW YORK )  
COUNTY OF ALBANY ) SS.:

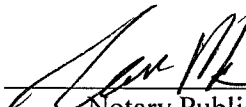
On the \_\_\_\_\_ day of \_\_\_\_\_, 2024, before me, the undersigned, personally appeared Michael P. McLaughlin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed 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 30 day of January, 2024, before me, the undersigned, personally appeared EP Helsey, 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

SCHEDULE A  
INSURANCE COVERAGE

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

1. Workers' Compensation and Employers Liability Insurance: A policy or policies providing protection for employees in the event of job related injuries or a waiver of the requirements of this insurance with such waiver to be issued by New York State.
2. Automobile Liability Insurance: A policy or policies with the limits of not less than \$500,000 for each accident because of bodily injury, sickness or disease, including death at any time, resulting therefrom, sustained by any person caused by accident, and arising out of the ownership, maintenance or use of any automobiles; and with the limits of \$500,000 for damage because of injury to or destruction of property, including the loss of the use thereof, caused by accident and arising out of the ownership, maintenance or use of any automobiles.
3. General Liability Insurance: A policy or policies of comprehensive all-risk insurance including coverage for demolition of structures with limits of not less than:

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



## APPENDIX A

### **OBLIGATIONS AND ACTIVITIES OF THE PROVIDER 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 The Altamont Program, Inc.
2. "Covered Entity" – for purposes of this Agreement, the term "Covered Entity" shall mean the County and/or the Department.
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 Social Service 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 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 December 1, 2023 – February 29, 2024. 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 New York State Social Service 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.