

<b>Note: To the extent that an existing Net Exchange exists between the Parties, this Exchange Agreement replaces the existing Net Exchange Agreement in its entirety.</b>	<b>Revised 11/17/2020</b>
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### HEALTHeNET Data Exchange Agreement

This HEALTHeNET Data Exchange Agreement (the “**Exchange Agreement**”), effective as of [DATE] (the “**Effective Date**”), is entered into by and between WNYHEALTHeNET, LLC, a New York limited liability company (“**HEALTHeNET**”) and [CUSTOMER], a [STATE OF ORGANIZATION] [ENTITY TYPE] (“**Customer**”). (HEALTHeNET and Customer are sometimes referred to herein as a “**Party**” or the “**Parties**”.)

WHEREAS, HEALTHeNET owns and/or licenses technology for a HEALTHeNET Exchange Application, which accepts X12 EDI standard transaction requests and generates a response routed to the application host system;

WHEREAS, HEALTHeNET utilizes data provided by certain health insurers that are covered entities defined under the Health Insurance Portability and Accountability Act of 1996, as amended (“**HIPAA**”);

WHEREAS, the list of HEALTHeNET Payors is available on the HEALTHeNET website and may be amended from time to time by HEALTHeNET in its sole discretion, the “**HEALTHeNET Payors**”);

WHEREAS, Customer desires to access the Network (defined below) solely in connection with Permitted Uses (defined below) on the terms and conditions set forth in this Exchange Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. To the extent not otherwise defined in the text of this Exchange Agreement, the following definitions shall apply:

“**Access Credentials**” means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the Network.

“**Action**” has the meaning set forth in **Section 12.1**.

“**Administrative Data Network**” or “**Network**” means HEALTHeNET’s systems, devices, mechanisms and infrastructure to facilitate the electronic movement of Patient Data.

“**Authorized User**” means Customer Users and End Users.

“**Business Associate**” shall generally have the same meaning as the term “Business Associate” at 45 CFR 160.103.

“**Business Associate Agreement**” or “**BAA**” refers to the Business Associate Agreement attached hereto at Schedule B.

“**Confidential Information**” has the meaning set forth in **Section 9.1**.

“**Covered Entity**” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103.

“**Customer Data**” means, other than Resultant Data, information, data and other content, in any form or medium, that is collected, downloaded or otherwise received, directly or indirectly from Customer or an Authorized User by or through the Services. For the avoidance of doubt, Customer Data does not include information from End Users reflecting the access or use of the Services by or on behalf of Customer or any Authorized User, including but not limited to Resultant Data.

“**Customer Systems**” means the Customer’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services.

“**Customer User**” means the personnel of Customer authorized by Customer to use the Services pursuant to the terms and conditions of this Exchange Agreement.

“**Data Source**” means a (i) Data Supplier, and (b) any other source from which data originates, and which is part of the Network.

“**Data Supplier**” means a payor organization that provides Patient Data to the Network and has signed a Network Agreement.

“**Disclosing Party**” has the meaning set forth in **Section 9.1**.

“**Documentation**” means any manuals, instructions or other documents or materials that the HEALTHeNET provides or makes available to Customer in any form or medium and which describe the functionality, components, features or requirements of the Services, Network or HEALTHeNET Materials, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

“**End User**” means the (i) Covered Entity and/or Covered Entity personnel or (ii) Business Associates of such Covered Entity, in either case accessing the Network, directly or indirectly, through Customer.

“**Fees**” has the meaning set forth in **Section 7.1**.

“**Force Majeure Event**” has the meaning set forth in **Section 15.1**.

“**Harmful Code**” means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data Processed thereby, or (b) prevent Customer or any Authorized User from accessing or using the Services or Network as intended by this Exchange Agreement. Harmful Code does not include any HEALTHeNET disabling device.

“**HEALTHeNET Indemnitee**” has the meaning set forth in **Section 12.2**.

“**HEALTHeNET Materials**” means the Service Software, Documentation and Network and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or

functional descriptions, requirements, plans or reports, that are owned, provided or used by HEALTHeNET or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services, Service Software or Network. For the avoidance of doubt, HEALTHeNET Materials include Resultant Data and any information, data or other content derived from HEALTHeNET's monitoring of Customer's access to or use of the Services, but do not include Customer Data.

**"HEALTHeNET Personnel"** means all individuals involved in the performance of Services as employees, agents or independent contractors of HEALTHeNET or any Subcontractor.

**"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, and its implementing regulations set forth at 45 CFR Parts 160 and 164.

**"HIPAA Rules"** means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

**"Indemnitee"** has the meaning set forth in **Section 12.3**.

**"Indemnitor"** has the meaning set forth in **Section 12.3**.

**"Intellectual Property Rights"** means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights Laws, and all similar or equivalent rights or forms of protection, in any part of the world.

**"Law"** means any applicable statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

**"Losses"** means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

**"Network Agreement"** means the agreement made by and between HEALTHeNET and each of its Data Suppliers, which sets forth the terms and conditions governing the operation of the Network and the rights and responsibilities of the Data Suppliers and HEALTHeNET with respect to the Network.

**"Patient Data"** means health information that is created or received by a health care provider, payer, employer, or other Covered Entity and relates to the past, present, or future physical or mental health condition of an individual or the provision of health care to an individual and that identifies the individual, or the past, present or future payment for the provision of health care to an individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, including such information that is made available for exchange by a Data Source.

**"Permitted Uses"** has the meaning set forth in **Section 3.3**.

**"Person"** means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

**"Policies and Procedures"** means HEALTHeNET's policies and procedures applicable to the operation of the Network, as may exist and be in effect, and as amended, repealed, and/or replaced from

time to time. The Policies and Procedures as in effect as of the date hereof are incorporated herein by reference and are available on HEALTHeNET's website.

**"Process"** means to take any action or perform any operation or set of operations that the Services are capable of taking or performing on any data, information or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or block, erase or destroy. **"Processing"** and **"Processed"** have correlative meanings.

**"Receiving Party"** has the meaning set forth in **Section 9.1**.

**"Reimbursable Expenses"** has the meaning set forth in **Section 7.3**.

**"Representatives"** means, with respect to a Party, that Party's and its affiliates' employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors and legal advisors.

**"Resultant Data"** means information, data and other content that is derived by or through the Services from Processing Customer Data and is sufficiently different from such Customer Data that such Customer Data cannot be reverse engineered or otherwise identified from the inspection, analysis or further Processing of such information, data or content.

**"Service Software"** means any HEALTHeNET software applications or and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that HEALTHeNET provides remote access to and use of as part of the Services.

**"Services"** has the meaning set forth in **Section 2.1**.

**"Term"** has the meaning set forth in **Section 10.1**.

**"Third Party Materials"** means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to HEALTHeNET.

**"Unauthorized Use"** means (i) any attempt at or any action that results in circumventing the access controls or access policies of the Network; (ii) use in violation of intellectual property, privacy, publicity, proprietary information rights and policies of others; and/or (iii) use other than in accordance with this Exchange Agreement or applicable law.

## 2. Services.

2.1 Services. Subject to and conditioned on compliance with the terms and conditions of this Exchange Agreement, during the Term, HEALTHeNET shall use commercially reasonable efforts to provide to Customer and Authorized Users the services described in the attached **Schedule A** of this Exchange Agreement (collectively, the **"Services"**), as amended from time to time, on the terms and conditions hereof, including to host, manage, operate and maintain the Network for remote electronic access and use by Customer and Authorized Users 24 hours per day, seven days per week every day of the year, except for:

- (a) any downtime due to a Force Majeure Event;

(b) any other circumstances beyond HEALTHeNET's reasonable control, including Customer's, or any Authorized User's use of Third Party Materials, misuse of the Network, or use of the Services other than in compliance with the express terms of this Exchange Agreement;

(c) any scheduled downtime for which HEALTHeNET has given Customer reasonable notice; and

(d) any unscheduled downtime due to technical or other difficulties outside of HEALTHeNET's control after commercially reasonable efforts;

(e) any suspension or termination of Customer's, any of its Representatives' or any Authorized User's access to or use of the Network as permitted by this Exchange Agreement.

2.2 Service and System Control. Except as otherwise expressly provided in this Exchange Agreement, as between the Parties:

(a) HEALTHeNET has and will retain sole control over the operation, provision, maintenance and management of the Services and HEALTHeNET Materials, including the: (i) Network; (ii) selection, deployment, modification and replacement of the Service Software; and (iii) performance of service maintenance, upgrades, corrections and repairs; and

(b) Customer has and will retain sole control over the operation, maintenance and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Services and HEALTHeNET Materials by any Person by or through the Customer Systems or any other means controlled by Customer or any of its Representatives, including any: (i) information, instructions or materials provided by any of them to HEALTHeNET; (ii) results obtained from any use of the Services or HEALTHeNET Materials; and (iii) conclusions, decisions or actions based on such use.

2.3 Service Management. Each Party shall, throughout the Term, maintain within its organization a service manager to serve as such Party's primary point of contact for day-to-day communications, consultation and decision-making regarding the Services. Each service manager shall be responsible for providing all day-to-day consents and approvals on behalf of such Party under this Exchange Agreement. Each Party shall ensure its service manager has the requisite organizational authority, skill, experience and other qualifications to perform in such capacity. Each Party shall use commercially reasonable efforts to maintain the same service manager in place throughout the Term. If either Party's service manager ceases to be employed by such Party or such Party otherwise wishes to replace its service manager, such Party shall promptly name a new service manager by written notice to the other Party.

2.4 Changes. HEALTHeNET reserves the right, in its sole discretion, to make any changes to the Network, Services, HEALTHeNET Materials and Policies and Procedures that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of HEALTHeNET's services to its customers and other constituents, (ii) the competitive strength of, or market for, HEALTHeNET's services or (iii) the Services' cost efficiency or performance; or (b) comply with Law (collectively the "**Changes**"). Unless otherwise required by Law, HEALTHeNET shall endeavor to give Customer ninety (90) days advance notice of any Changes.

2.5 Subcontractors. HEALTHeNET may from time to time in its discretion engage subcontractors to perform Services or otherwise service and maintain the Service Software.

2.6 Suspension or Termination of Services. HEALTHeNET may, directly or indirectly, suspend, terminate or otherwise deny Customer's, any Customer Representative's, or any Authorized User's

access to or use of all or any part of the Services or HEALTHeNET Materials, without incurring any resulting obligation or liability, if: (a) HEALTHeNET receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires HEALTHeNET to do so; or (b) HEALTHeNET believes, in its sole discretion, that: (i) Customer, any Authorized Users, or any of Customer's Representatives has failed to comply with, any material term of this Exchange Agreement, or accessed or used the Services beyond the scope of the rights granted, or for a purpose not authorized under this Exchange Agreement, or in any manner that does not comply with any material instruction or requirement of this Exchange Agreement; (ii) Customer, any Authorized User, or any of Customer's Representatives is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Services; or (iii) this Exchange Agreement is terminated.

This **Section 2.6** does not limit any of HEALTHeNET's other rights or remedies, whether at law, in equity or under this Exchange Agreement.

### 3. Authorization and Customer Restrictions.

3.1 Authorization. Subject to and conditioned on Customer's payment of the Fees and compliance and performance in accordance with all other terms and conditions of this Exchange Agreement, HEALTHeNET hereby authorizes Customer to access and use, during the Term, the Services and such HEALTHeNET Materials as HEALTHeNET may supply or make available to Customer solely for the Permitted Use by and through Authorized Users, and the conditions and limitations set forth in this Exchange Agreement. This authorization is non-exclusive and other than as may be expressly set forth in **Section 16.7**, non-transferable.

3.2 Reservation of Rights. Nothing in this Exchange Agreement grants any right, title or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, HEALTHeNET Materials or Third Party Materials, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Services, the HEALTHeNET Materials and the Third Party Materials are and will remain with HEALTHeNET and the respective rights holders in the Third Party Materials.

3.3 Permitted Uses. An Authorized User may use the Network, Services and Patient Data only as follows ("Permitted Uses"):

(a) Uses for Treatment, Payment and Health Care Operations (as those terms are defined in HIPAA); or (b) Any other use that is required under HIPAA, or other applicable law governing the use and disclosure of Patient Data, which in the case of 3.3(a) or (b) is not otherwise an Unauthorized Use.

3.4 Authorization Limitations and Restrictions. Customer shall not, and shall not permit any other Person to, access or use the Services or HEALTHeNET Materials except as expressly permitted by this Exchange Agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Exchange Agreement expressly permits:

(a) copy, modify or create derivative works or improvements of the Services or HEALTHeNET Materials;

(b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services or HEALTHeNET Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;

(c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services or HEALTHeNET Materials, in whole or in part;

(d) bypass or breach any security device or protection used by the Services or HEALTHeNET Materials or access or use the Services or HEALTHeNET Materials other than by an Authorized User through the use of his or her own then valid Access Credentials;

(e) input, upload, transmit or otherwise provide to or through the Services or Network, any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code;

(f) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, Network or HEALTHeNET's provision of services to any third party, in whole or in part;

(g) remove, delete, alter or obscure any trademarks, Documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services or HEALTHeNET Materials, including any copy thereof;

(h) access or use the Services or HEALTHeNET Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party, including but not limited to Data Sources (including by any unauthorized access to, misappropriation, use, alteration, destruction or disclosure of the data of any other HEALTHeNET customer), or that violates any Law;

(i) access or use the Services or HEALTHeNET Materials for purposes of competitive analysis of any Data Supplier(s), or of the Services or HEALTHeNET Materials, the development, provision or use of a competing software service or product or any other purpose that is to HEALTHeNET's detriment or commercial disadvantage;

(j) access or use the Services or HEALTHeNET Materials in, or in association with, the design, construction, maintenance, operation of any hazardous environments, systems or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Services could lead to personal injury or severe physical or property damage;

(k) otherwise access or use the Services or HEALTHeNET Materials beyond the scope of the authorization granted under **Section 3.1**; or

(l) allow any Authorized User to receive, maintain, store, access, or transmit Patient Data through or from HEALTHeNET outside of the United States and its territories.

3.5 Service Usage. **Schedule A** sets forth a schedule of any Fees applicable to the Services.

#### 4. Customer Obligations.

4.1 Customer Systems and Cooperation. Customer shall at all times during the Term: (a) set up, maintain and operate in good repair all Customer Systems on or through which the Services are accessed or used; (b) provide HEALTHeNET Personnel with such access to Customer's premises and Customer Systems as is necessary for HEALTHeNET to perform the Services; and (c) provide all cooperation and assistance as HEALTHeNET may reasonably request to enable HEALTHeNET to exercise its rights and perform its obligations under and in connection with this Exchange Agreement.

4.2 Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by **Section 3.4**, Customer shall, and shall cause Customer Users or End Users, as the

case may be, to immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and HEALTHeNET Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify HEALTHeNET of any such actual or threatened activity.

4.3 Record Retention and Availability. Customer shall retain and shall require any of its Subcontractors performing work relating to this Exchange Agreement, to retain records related to the subject matter of this Exchange Agreement through the end of the sixth (6<sup>th</sup>) full calendar year after the date of Customer's most recent access of the Network or use of the Services pursuant to this Exchange Agreement. Customer shall at all times during the term of this Exchange Agreement, and thereafter, make available, or cause to be made available in a format reasonably requested by HEALTHeNET, to HEALTHeNET, such records as are reasonably determined by HEALTHeNET to be necessary to perform, carry out, and/or enforce responsibilities hereunder or to defend or prosecute any legal or administrative claim involving a third party, brought by or against HEALTHeNET, relating to the subject matter of this Exchange Agreement. HEALTHeNET shall give Customer ten (10) days prior written notice of its need for such records, and any such inspection shall be conducted without material interference with the operations of Customer.

4.4 Audits. Customer agrees to cooperate, at its own cost and expense, with the reasonable request of HEALTHeNET to audit usage of the Network by Customer, its Representatives, and Authorized Users, and as otherwise required under the BAA.

5. Customer Responsibility for Customer Users and End Users.

5.1 Identification of Customer Users and End Users. If requested by HEALTHeNET, Customer shall provide HEALTHeNET with a list in a medium and format approved by HEALTHeNET identifying all of the Customer Users and all End Users.

5.2 Requirements for Customer Users. Customer shall ensure that each of its Customer Users satisfies all of the applicable requirements set forth in the Policies and Procedures. In the event a Customer User is in violation of applicable requirements set forth in the Policies and Procedures, Customer will provide all reasonable cooperation to HEALTHeNET and its contractors to address or mitigate such violations and prevent recurrence of similar violations.

5.3 Responsibility for Conduct of Customer, Customer Users, and its Representatives. Customer shall be solely responsible for all acts and omissions, including but not limited to any Unauthorized Use, of the Customer, Customer Users and/or its Representatives and all other individuals who access the Network and/or use the Services either through the Customer or by use of any password, identifier or log-on received or obtained from the Customer, any of the Customer Users, or Customer Representatives.

5.4 Customer Responsibility for Customer Users and End Users. Customer represents that to the extent it is a Business Associate of its End Users upon request, Customer will provide HEALTHeNET with copies of its business associate agreements with End Users. Customer will be responsible to instruct End Users on proper and permitted use of the Services and will monitor End Users' usage to ensure End Users' compliance with the applicable terms of this Exchange Agreement and the Policies and Procedures. In the event an End User is in violation of applicable requirements set forth in the Policies and Procedures, Customer will use commercially reasonable efforts to enforce its rights against End User to address such violation, and will provide all reasonable cooperation to HEALTHeNET and its contractors to address or mitigate such violations and prevent recurrence of similar violations.



6. Security and Compliance with Applicable Law.

6.1 Generally. Unless otherwise specifically set forth in Schedule A, Customer shall be responsible for administering all access that Customer, Authorized Users, and Customer's Representatives may have to the Services, including without limitation: ensuring that all access to the Network and the information communicated through the Services at any of Customer's offices, sites or interface terminals complies with HIPAA and other Laws.

6.2 Enrollee Access. As between HEALTHeNET and Customer, Customer agrees to provide any "Enrollee," as that term is defined in Law, access to inspect and obtain a copy of his/her protected health information in a designated record set as defined in 45 C.F.R. § 164.501. Customer agrees to make amendments or corrections to Enrollee's protected health information when notified by HEALTHeNET that it has accepted an Enrollee's request to amend or correct such information, Customer agrees to make protected health information available to HEALTHeNET so that HEALTHeNET may provide an Enrollee, upon request, an accounting of disclosures made by HEALTHeNET for reasons other than payment, treatment or health care operations, as those terms are defined in 45 C.F.R. § 164.501. Customer agrees to make its internal Customers, books, and records relating to the use and disclosure of protected health information received from HEALTHeNET available to the Secretary of Health and Human Services for purposes of determining HEALTHeNET's compliance with Subpart E of Part 164 of Title 45 of the Code of Federal Regulations.

6.3 Customer Control and Responsibility. As between HEALTHeNET and Customer, Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (c) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services ("**Customer Systems**"); (d) the security and use of Customer's Authorized Users' Access Credentials; and (e) unless otherwise specifically set forth in Schedule A, all access to and use of the Services and HEALTHeNET Materials directly or indirectly by or through the Customer Systems or Customer's Authorized Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

6.4 Access and Security. Customer shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or Unauthorized Use of the Network; and (b) control the content and use of Patient Data, including the uploading or other provision of Patient Data.

6.5 Compliance with Laws, Regulations and Policies; Business Associate Agreement. This Agreement permits the Parties to be provided with, to have access to, Protected Health Information that is subject to the federal privacy and security regulations pursuant to HIPAA. The Parties hereby enter into and agree to be bound by the HIPAA Rules, Policies and Procedures, and Business Associate Agreement attached hereto as Schedule B (the "**BAA**"), which is incorporated herein by reference.

7. Fees; Payment Terms.

7.1 Fees. Customer shall pay HEALTHeNET any fees set forth in Schedule A ("**Fees**") in accordance with this **Section 7**.

7.2 Fee Increases. HEALTHeNET may increase Fees no more than once annually after the first contract year of the Term, including any contract year of any Renewal Term, by providing written notice to Customer at least sixty (60) calendar days prior to the commencement of that contract year, and **Schedule A** will be deemed amended accordingly.

7.3 Reimbursable Expenses. Customer shall reimburse HEALTHeNET for out-of-pocket expenses incurred by HEALTHeNET in connection with performing the Services (“**Reimbursable Expenses**”) as provided for in **Schedule A**.

7.4 Taxes. All Fees and other amounts payable by Customer under this Exchange Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on HEALTHeNET’s income.

7.5 Payment. Customer shall pay all Fees and Reimbursable Expenses within thirty (30) days after the date of the invoice therefor. Customer shall make all payments hereunder in US dollars in the manner described in **Schedule A**. Customer shall make payments to the address or account specified in **Schedule A** or such other address or account as HEALTHeNET may specify in writing from time to time.

7.6 Late Payment. If Customer fails to make any payment when due then, in addition to all other remedies that may be available:

(a) HEALTHeNET may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under Law; and

(b) Customer shall reimburse HEALTHeNET for all reasonable costs incurred by HEALTHeNET in collecting any late payments or interest, including attorneys’ fees, court costs and collection agency fees.

7.7 No Deductions or Setoffs. All amounts payable to HEALTHeNET under this Exchange Agreement shall be paid by Customer to HEALTHeNET in full without any setoff, recoupment, counterclaim, deduction, debit or withholding of any kind.

## 8. Intellectual Property Rights.

8.1 Services and HEALTHeNET Materials. All right, title and interest in and to the Services and HEALTHeNET Materials, including all Intellectual Property Rights therein, are and will remain with HEALTHeNET and the respective rights holders in the Third-Party Materials. Customer has no right, license or authorization with respect to any of the Services or HEALTHeNET Materials (including Third-Party Materials) except as expressly set forth in **Section 3.1** or any applicable third-party license, in each case subject to **Section 0**. All other rights in and to the Services and HEALTHeNET Materials (including Third-Party Materials) are expressly reserved by HEALTHeNET and the respective third-party licensors. In furtherance of the foregoing, Customer hereby unconditionally and irrevocably grants to HEALTHeNET an assignment of all right, title and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

8.2 Customer Data. As between Customer and HEALTHeNET, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in **Section 8.3**.

8.3 Consent to Use Customer Data. Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data: (a) to HEALTHeNET, its Representatives and the HEALTHeNET Personnel and Data Sources as are necessary or useful to perform the Services; and (b) to HEALTHeNET as are necessary or useful to enforce this Exchange Agreement and exercise its rights and perform its obligations under this Exchange Agreement and Law.

9. Confidentiality.

9.1 Confidential Information. In connection with this Exchange Agreement each Party (as the “**Disclosing Party**”) may disclose or make available Confidential Information to the other Party (as the “**Receiving Party**”). Subject to **Section 9.2**, “**Confidential Information**” means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party’s technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as “confidential”. Without limiting the foregoing, all HEALTHeNET Materials are the Confidential Information of HEALTHeNET and the terms and existence of this Exchange Agreement are the Confidential Information of HEALTHeNET.

9.2 Exclusions. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information’s being disclosed or made available to the Receiving Party in connection with this Exchange Agreement; (b) was or becomes generally known by the public other than by the Receiving Party’s or any of its Representatives’ noncompliance with this Exchange Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party’s knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

9.3 Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall for the Term and a six (6) year period following the later of the date upon which this Exchange Agreement is terminated or the date Customer last accesses the Network or makes use of the Services:

(a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Exchange Agreement;

(b) except as may be permitted by and subject to its compliance with **Section 9.4**, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party’s exercise of its rights or performance of its obligations under and in accordance with this Exchange Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party’s obligations under this **Section 9.3**; and (iii) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this **Section 9.3**;

(c) safeguard the Confidential Information from unauthorized use, access or disclosure in a manner inconsistent with this Exchange Agreement or Law using at least the degree of care it uses to protect similarly sensitive information and in no event less than the degree of care required by Law; and

(d) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this **Section 9**.

9.4 Compelled Disclosures. If the Receiving Party or any of its Representatives are compelled by Law to disclose any Confidential Information then, to the extent permitted by Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under **Section 9.3**; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this **Section 9.4**, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's outside legal counsel, the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

10. Term and Termination.

10.1 Term. The term of this Exchange Agreement commences as of the Effective Date and continues until terminated pursuant any of the Exchange Agreement's express provisions (the "**Term**").

10.2 Termination. In addition to any other express termination right set forth elsewhere in this Exchange Agreement:

(a) HEALTHeNET may terminate this Exchange Agreement, effective on written notice to Customer, if Customer: (i) fails to pay any amount when due hereunder, and such failure continues more than thirty (30) days after HEALTHeNET's delivery of written notice thereof; or (ii) breaches any of its obligations under **Section 3.4** (Authorization Limitations and Restrictions), **Section 4** (Customer Obligations), **Section 5** (Customer Responsibility for Customer Users and End Users), **Section 6** (Security and Compliance with Applicable Law), **Section 8** (Intellectual Property Rights) or **Section 9** (Confidentiality);

(b) either Party may terminate this Exchange Agreement, effective on written notice to the other party, if the other party materially breaches this Exchange Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach;

(c) either Party may terminate this Exchange Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; and

(d) either Party may terminate this Exchange Agreement for any reason on at least ninety (90) days prior written notice to the other Party.

10.3 Effect of Expiration or Termination. Upon any termination of this Exchange Agreement, except as expressly otherwise provided in this Exchange Agreement:

(a) all rights, licenses, consents and authorizations granted by either Party to the other hereunder will immediately terminate;

(b) HEALTHeNET shall immediately cease all use of any Customer Data or Customer's Confidential Information and (i) promptly return to Customer, or at Customer's written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on Customer Data or Customer's Confidential Information; and (ii) permanently erase all Customer Data and Customer's Confidential Information from all systems HEALTHeNET directly controls, provided that, for clarity, HEALTHeNET's obligations under this **Section 10.3(b)** do not apply to any Resultant Data;

(c) Customer shall immediately cease all use of any Services or HEALTHeNET Materials and (i) promptly return to HEALTHeNET, or at HEALTHeNET's written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on any HEALTHeNET Materials or HEALTHeNET's Confidential Information; (ii) permanently erase all HEALTHeNET Materials and HEALTHeNET's Confidential Information from all systems Customer directly or indirectly controls; and (iii) certify to HEALTHeNET in a signed and notarized written instrument that it has complied with the requirements of this **Section 10.3(c)**;

(d) notwithstanding anything to the contrary in this Exchange Agreement, with respect to information and materials then in its possession or control: (i) the Receiving Party may retain the Disclosing Party's Confidential Information; and (ii) HEALTHeNET may retain Customer Data; (iii) Customer may retain HEALTHeNET Materials, in the case of each of subclause (i), (ii) and (iii) in its then current state and solely to the extent and for so long as required by Law and **Section 4.3**; (iv) HEALTHeNET may also retain Customer Data in its backups, archives and disaster recovery systems until such Customer Data is deleted in the ordinary course; and (v) all information and materials described in this **Section 10.3(d)** will remain subject to all confidentiality, security and other applicable requirements of this Exchange Agreement;

(e) HEALTHeNET may disable any or all of Customer's or Authorized Users' access to the Network and HEALTHeNET Materials;

(f) if Customer terminates this Exchange Agreement pursuant to **Section 10.2(b)**, Customer will be relieved of any obligation to pay any Fees attributable to the period after the effective date of such termination; and

(g) if HEALTHeNET terminates this Exchange Agreement pursuant to **Section 10.2(a)** or **Section 10.2(b)**, all Fees that would have become payable had the Agreement remained in effect until the effective date of the termination will become immediately due and payable. Customer shall pay such Fees, together with all previously-accrued but not yet paid Fees and Reimbursable Expenses, on receipt of HEALTHeNET's invoice therefor.

10.4 Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Exchange Agreement that, by its nature, should survive termination or expiration of this Exchange Agreement, will survive any expiration or termination of this Exchange Agreement: **Section 0, Section 4, Section 6, Section 8, Section 9, Section 10.3, this Section 10.4, Section 11, Section 12, Section 13 and Section 16**.

## 11. Representations and Warranties.

11.1 Mutual Representations and Warranties. Each Party represents and warrants to the other party that:

(a) it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;

(b) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Exchange Agreement;

(c) the execution of this Exchange Agreement by its representative whose signature is set forth at the end of this Exchange Agreement has been duly authorized by all necessary corporate or organizational action of such Party; and

(d) when executed and delivered by both parties, this Exchange Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such party in accordance with its terms.

11.2 Additional HEALTHeNET Representations, Warranties and Covenants. HEALTHeNET represents, warrants and covenants to Customer that HEALTHeNET will perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services.

11.3 Additional Customer Representations, Warranties and Covenants. Customer represents, warrants and covenants to HEALTHeNET that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by HEALTHeNET and Processed in accordance with this Exchange Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any Law.

11.4 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 11.1, SECTION 11.2 AND SECTION 11.3, ALL SERVICES AND PATIENT DATA ARE PROVIDED “AS IS” AND HEALTHeNET HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND HEALTHeNET SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, HEALTHeNET MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR PROVIDER MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER’S, ANY CUSTOMER USERS’, END USERS’ OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED “AS IS” AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

## 12. Indemnification.

12.1 HEALTHeNET Indemnification. HEALTHeNET shall indemnify, defend and hold harmless Customer from and against any and all Losses incurred by Customer arising out of or relating to any claim, suit, action or proceeding (each, an “**Action**”) by a third party that Customer’s or a Customer User’s use of the Services (excluding Customer Data and Third Party Materials) in compliance with this

Exchange Agreement infringes, a U.S. Intellectual Property Right. The foregoing obligation does not apply to any Action or Losses arising out of or relating to any:

- (a) access to or use of the Services or HEALTHeNET Materials in combination with any hardware, system, software, network or other materials or service not provided or authorized in writing by HEALTHeNET;
- (b) modification of the Services or HEALTHeNET Materials other than: (i) by HEALTHeNET; or (ii) with HEALTHeNET's written approval in accordance with HEALTHeNET's written specification;
- (c) failure to timely implement any modifications, upgrades, replacements or enhancements made available to Customer by or on behalf of HEALTHeNET; or
- (d) act, omission or other matter described in **Section 12.2(a)**, **Section 12.2(b)**, **Section 12.2(c)** or **Section 12.2(d)**, whether or not the same results in any Action against or Losses by any HEALTHeNET Indemnitee.

12.2 Customer Indemnification. Customer shall indemnify, defend and hold harmless HEALTHeNET and its Representatives, and each of its and their respective officers, directors, employees, agents, successors and assigns (each, a "**HEALTHeNET Indemnitee**") from and against any and all Losses incurred by such HEALTHeNET Indemnitee in connection with any Action by a third party to the extent that such Losses arise out of or relate to any:

- (a) Customer Data, including any Processing of Customer Data by or on behalf of HEALTHeNET in accordance with this Exchange Agreement;
- (b) any other materials or information (including any documents, data, specifications, software, content or technology) provided by or on behalf of Customer or any Customer User, including HEALTHeNET's compliance with any specifications or directions provided by or on behalf of Customer or any Customer User to the extent prepared without any contribution by HEALTHeNET;
- (c) allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants or obligations under this Exchange Agreement, including, but not limited to those contained in Section 6 of this Exchange Agreement; or
- (d) negligence or more culpable act or omission (including recklessness or willful misconduct) by Customer, any Customer User, or any Customer Representative, in connection with this Exchange Agreement.

12.3 Indemnification Procedure. Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified pursuant to **Section 12.1** or **Section 12.212.1**, as the case may be. The party seeking indemnification (the "**Indemnitee**") shall cooperate with the other party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Action and shall employ counsel reasonably acceptable to the Indemnitee to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this **Section 12.3** will not relieve the Indemnitor of its obligations under this **Section 12** except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

12.4 Mitigation. If any of the Services or HEALTHeNET Materials are, or in HEALTHeNET's opinion are likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Customer's or any Authorized User's use of the Services or HEALTHeNET Materials is enjoined or threatened to be enjoined, HEALTHeNET may, at its option and sole cost and expense:

(a) obtain the right for Customer or any Authorized User, as the case may be, to continue to use the Services and HEALTHeNET Materials materially as contemplated by this Exchange Agreement;

(b) modify or replace the Services and HEALTHeNET Materials, in whole or in part, to seek to make the Services and HEALTHeNET Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services and HEALTHeNET Materials, as applicable, under this Exchange Agreement; or

(c) by written notice to Customer, terminate this Exchange Agreement with respect to all or part of the Services and HEALTHeNET Materials, and require Customer and Authorized Users to immediately cease any use of the Services and HEALTHeNET Materials or any specified part or feature thereof, provided that if such termination occurs prior to two (2) years after the Effective Date, subject to Customer's compliance with its post-termination obligations set forth in **Section 10.3**, Customer will be entitled to a refund of refund of any amounts paid in accordance with Schedule A for which Services were not provided.

THIS SECTION 12 SETS FORTH CUSTOMER'S SOLE REMEDIES AND HEALTHeNET'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND PROVIDER MATERIALS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

### 13. Limitations of Liability.

13.1 EXCLUSION OF DAMAGES. IN NO EVENT WILL HEALTHeNET BE LIABLE IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, OR (c) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER HEALTHeNET WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13.2 CAP ON MONETARY LIABILITY OF HEALTHeNET AND DATA SOURCES. IN NO EVENT WILL THE AGGREGATE LIABILITY OF HEALTHeNET AND DATA SOURCES UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED AMOUNTS PAID FOR SERVICES BY CUSTOMER TO HEALTHeNET DURING THE 12 MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM OF LIABILITY.



14. Insurance.

14.1 Required Coverage.

(a) HEALTHeNET shall maintain, throughout the term of the Exchange Agreement, at its sole expense, insurance for “cyber-liability” or similar insurance appropriate to a breach of protected health information or personally identifiable information, as well as such professional and general liability insurance coverage as it deems reasonable and necessary to insure itself and its officers, directors, and employees against any third party claim or cause of action arising out of the performance of the Exchange Agreement.

(b) Customer shall maintain, throughout the term of its Exchange Agreement, at its sole expense, such professional, errors and omissions coverage and general liability insurance coverage, commensurate with its organizational characteristics, as it deems reasonable and necessary to insure itself and its officers, directors, and employees against any third party claim or cause of action arising out of the performance of its Exchange Agreement. Customer shall also maintain cyber liability coverage in the minimum amount of five million dollars (\$5,000,000.00) and including:

(i) “Breach Response” coverage in the minimum amount of two million dollars (\$2,000,000), and

(ii) In the event of a breach by Customer of the BAA, coverage for Customer to reimburse HEALTHeNET for costs incurred to mitigate or restore reputational damages of up to one million dollars (\$1,000,000.00).

(c) In the event of termination of the Exchange Agreement for any reason, HEALTHeNET and Customer either shall maintain its insurance coverage called for under this Section 14.1 for a period of not less than three (3) years, or shall provide an equivalent extended reporting endorsement (“tail policy”).

14.2 Evidence of Coverage

HEALTHeNET and Customer shall provide evidence of coverages required under Section 14.1 to the other upon request.

15. Force Majeure.

15.1 No Breach or Default. In no event will either Party be liable or responsible the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Exchange Agreement, (except for any payment obligation), when and to the extent such failure or delay is caused by any circumstances beyond such Party’s reasonable control (a “**Force Majeure Event**”), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Exchange Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition , or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Either Party may terminate this Exchange Agreement if a Force Majeure Event affecting the other Party continues substantially uninterrupted for a period of THIRTY (30) days or more.

16. Miscellaneous.

16.1 Further Assurances. Upon a Party's reasonable request, the other Party shall, at the requesting Party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Exchange Agreement.

16.2 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Exchange Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

16.3 Public Announcements. Neither Party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Exchange Agreement or otherwise use the other Party's trademarks, service marks, trade names, logos, domain names or other indicia of source, affiliation or sponsorship, in each case, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that HEALTHeNET may, without Customer's consent, include Customer's name or other indicia in its lists of HEALTHeNET's current or former customers of HEALTHeNET in promotional materials.

16.4 Notices. Except as otherwise expressly set forth in this Exchange Agreement, all notices, requests, consents, claims, demands, waivers and other communications under this Exchange Agreement have binding legal effect only if in writing and addressed to a party as follows (or to such other address or such other person that such party may designate from time to time in accordance with this **Section 16.4**):

If to HEALTHeNET: WNYHEALTHeNET, LLC  
2475 George Urban Blvd.  
Suite 202  
Depew, NY 14043  
Attn: Dan Porreca, Executive Director

If to Customer: [CUSTOMER ADDRESS]  
  
Facsimile: [FAX NUMBER]  
  
[E-mail: [NOTICES CONTACT'S E-MAIL ADDRESS]]  
  
Attention: [NAME AND TITLE OF OFFICER TO RECEIVE NOTICES]

Notices sent in accordance with this **Section 16.4** will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or e-mail, (in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the third (3<sup>rd</sup>) day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

16.5 Headings. The headings in this Exchange Agreement are for reference only and do not affect the interpretation of this Exchange Agreement.

16.6 Entire Agreement. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Exchange Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

16.7 Assignment. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Exchange Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without HEALTHeNET's prior written consent. Any purported assignment, delegation or transfer in violation of this Section is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

16.8 No Third-party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature.

16.9 Amendment and Modification; Waiver. No amendment to or modification of this Exchange Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

16.10 Severability. If any provision of this Exchange Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall be deemed revised to the extent necessary to become valid, legal and enforceable, and shall not affect any other term or provision of this Exchange Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

16.11 Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule. Any legal suit, action or proceeding arising out of or related to this Exchange Agreement or the licenses granted hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of New York in each case located in the city of Buffalo and County of Erie, and each Party irrevocably submits to the exclusive jurisdiction of such courts.

16.12 Waiver of Jury Trial. Each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Exchange Agreement or the transactions contemplated hereby.

16.13 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Exchange Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Exchange Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Exchange Agreement as of the date first above written.

**WNYHEALTHeNET, LLC**

**[Customer]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Daniel E. Porreca

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

Title: Executive Director

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE A**  
**SERVICES AND FEES**

## SCHEDULE B

### BUSINESS ASSOCIATE AGREEMENT (SUBCONTRACTOR)

Effective as of the date of the latest signature below, (the “Effective Date”), and in connection with the Underlying Contact (as defined below), which requires \_\_\_\_\_, a \_\_\_\_\_ located at \_\_\_\_\_ (“Customer”), to be provided with, to have access to, and/or to disclose Protected Health Information (as defined below) that is subject to regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its implementing regulations codified at 45 C.F.R. parts 160-164, as may be amended from time to time (the “Privacy and Security Rules”) and the Health Information Technology for Economic and Clinical Health Act and the regulations promulgated pursuant to such Act, including the Omnibus Rule effective September 23, 2013, as may be amended from time to time (“HITECH”) (HIPAA, the Privacy and Security Rules, HITECH and the Omnibus Rule together are the “HIPAA Rules”), this Subcontractor Business Associate Agreement (the “Agreement”) is made and entered into by and between Customer and WNYHEALTHeNET, LLC d/b/a HEALTHeNET, a New York Limited Liability Company (“HEALTHeNET”), in connection with Customer’s receipt, use, disclosure and creation of Protected Health Information with respect to the Underlying Contract. If an existing Business Associate Agreement exists between HEALTHeNET and Customer (the “Existing BAA”), this Agreement is intended to replace any Existing BAA as of the Effective Date.

NOW, THEREFORE, HEALTHeNET and Customer agree as follows:

1. **DEFINITIONS** Unless otherwise defined in this Agreement, any and all capitalized terms used in this Agreement have the meanings ascribed to them in the HIPAA Rules or the Underlying Contract.
  - a. “Breach” has the same meaning as the term “Breach”, as defined in 45 C.F.R. § 164.402.
  - b. “Business Associate” has the same meaning as the term “Business Associate”, as defined in 45 C.F.R. § 160.103.
  - c. “Covered Entity” has the same meaning as the term “Covered Entity”, as defined in 45 C.F.R. § 160.103.
  - d. “Designated Record Set” has the same meaning as the term “Designated Record Set”, as defined in 45 C.F.R. § 164.501.
  - e. “Electronic Protected Health Information” or “Electronic PHI” means information that comes within paragraphs 1(i) or 1(ii) of the definition of “Protected Health Information”, as defined in 45 C.F.R. § 160.103.

f. “Individual” has the same meaning as the term “Individual”, as defined in 45 C.F.R. § 160.103 and shall, in accordance with 45 C.F.R. § 164.502, include a person who qualifies as a “Personal Representative” as defined in the Underlying Contract.

g. “Medicaid Confidential Data” or “MCD” means any information or data received directly or indirectly from the New York Department of Health (“DOH”) about individuals who have applied for or received Medicaid benefits, including Medicaid claims data, names and addresses, diagnoses, medical services, and other personally identifiable information. MCD may include Protected Health Information.

h. “Protected Health Information” or “PHI” has the same meaning as the term “Protected Health Information”, as defined in 45 C.F.R. § 160.103. “Protected Health Information” includes without limitation “Electronic Protected Health Information” as defined above.

i. “Security Incident” has the same meaning as the term “Security Incident”, as defined in 45 C.F.R. § 164.304.

j. “Subcontractor” has the same meaning as the term “Subcontractor”, as defined in 45 C.F.R. § 160.103.

k. “Underlying Contract” means any existing or future agreement entered into by and between Customer and HEALTHeNET.

l. “Unsecured Protected Health Information” or “Unsecured PHI” means Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the U.S. Department of Health and Human Services in guidance issued under section 13402(h)(2) of HITECH (42 USC 17932(h)(2)).

## 2. **OBLIGATIONS OF THE PARTIES WITH RESPECT TO PHI**

2.1 **Obligations of Customer.** With regard to its use and/or disclosure of PHI, and only to the extent applicable to Customer’s operations, Customer agrees to:

a. Not use or disclose the PHI other than as permitted or required by this Agreement or the Underlying Contracts or as required by applicable law, rule or regulation, or as otherwise permitted under the Privacy and Security Rules.

b. Implement and use appropriate safeguards to prevent the use or disclosure of the PHI other than as provided for by this Agreement. Without limiting the generality of the foregoing sentence, Customer will:

(i) Implement Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI as required by the Privacy and Security Rules;

(ii) Ensure that any agent, including a subcontractor, to whom Customer provides Electronic PHI agrees to implement reasonable and appropriate safeguards to protect Electronic PHI; and

(iii) Promptly (but in no event later than 10 days after discovery (as defined in 45 C.F.R. § 164.410(a)(2)) thereof) report to HEALTHeNET any Security Incident of which Customer becomes aware. Any notice of a Security Incident shall include the identification of each Individual whose Protected Health Information has been, or is reasonably believed by Customer to have been, accessed, acquired, or disclosed during such Security Incident as well as any other relevant information regarding the Security Incident, in each case to the extent such information is available to Customer and promptly after (but in no event later than 10 days after discovery (as defined in 45 C.F.R. § 164.410(a)(2)) thereof) such information becomes known to Customer. This Section 2.1.b(iii) constitutes notice by Customer to HEALTHeNET of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which notice to HEALTHeNET by Customer shall be required only upon request. “Unsuccessful Security Incidents” shall include, but not be limited to, pings and other broadcast attacks on Customer’s firewall, port scans, unsuccessful log-in attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.

c. Promptly report to HEALTHeNET, and mitigate, to the extent practicable, any harmful effect that is known to Customer of any use or disclosure of PHI by Customer in violation of the requirements of this Agreement and/or any Security Incident or Breach, and take steps to avoid any further similar violating uses or disclosures and/or Security Incidents or Breaches.

d. Report to HEALTHeNET any Breach of Unsecured PHI immediately after (but in no event later than 5 days after discovery (as defined in 45 C.F.R. § 164.410(a)(2)) of such Breach) the discovery (as defined in 45 C.F.R. § 164.410(a)(2)) of such Breach and provide to HEALTHeNET notice of all of the elements specified in 45 C.F.R. § 164.404(c) (to the extent such information is available to Customer) promptly after (but in no event later than 5 days after discovery (as defined in 45 C.F.R. § 164.410(a)(2)) of such Breach) such information becomes known to Customer, including, to the extent possible, the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Customer to have been, accessed, acquired or disclosed during such Breach. Customer shall cooperate and assist HEALTHeNET, at no cost to HEALTHeNET only to the extent such Breach is caused by or resulting from the acts or



omissions of Customer, its subcontractors or agents, in making notification as required by law in the event of a Breach due to Customer.

e. Customer shall cooperate and assist HEALTHeNET in the reasonable investigation of any violation of the requirements of this Agreement and/or any Security Incident or Breach at no cost to HEALTHeNET to the extent such violation, Security Incident and/or Breach is caused by or resulting from the acts or omissions of Customer, its subcontractors or agents.

f. Ensure that all of its subcontractors and agents that receive, use, or have access to PHI agree, in writing, to the same restrictions and conditions on the use and/or disclosure of PHI that apply through this Agreement to Customer with respect to such information. HEALTHeNET acknowledges that such writing may differ in form, but will not differ in substance from this Agreement, and will be at least as strict at the terms of this Agreement. If Customer becomes aware of a pattern of activity or practice of a subcontractor or agent that would constitute a material breach or violation of the subcontractor's or agent's obligations under such writing, Customer shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the contract or arrangement, if feasible.

g. Upon 10 days' written notice by HEALTHeNET, if applicable, provide access to PHI in a Designated Record Set to HEALTHeNET or, as directed by HEALTHeNET, to an Individual in order to meet applicable access requirements of the Privacy and Security Rules. If HEALTHeNET is required to provide access to PHI in a Designated Record Set in a specific format, Customer will provide access to PHI in such format to the extent Customer maintains PHI in such format in accordance with Section 13405(e) of the HITECH Act.

h. Upon 10 days' written notice by HEALTHeNET, if applicable, make, or make available for, amendment(s) to PHI in a Designated Record Set that HEALTHeNET directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of HEALTHeNET or an Individual. If an Individual makes a request for an amendment to PHI directly to Customer, Customer shall notify HEALTHeNET of the request within 3 business days of such request and will cooperate with HEALTHeNET and allow HEALTHeNET to send the response to the Individual.

i. Subject to attorney-client and any other applicable legal privilege, make its internal practices, books and records, including policies and procedures relating to the use and disclosure of PHI, available to the Secretary of the U.S. Department of Health and Human Services (“HHS”) or his/her designee, in the reasonable time and manner specified by the Secretary, for purposes of the Secretary determining compliance of HEALTHeNET with the HIPAA Rules. Subject to the legal privileges referred to above and as otherwise permitted by law, Customer shall, within 10 days after receipt of such request, notify

HEALTHeNET of any request for access by HHS and shall provide HEALTHeNET with a copy of the HHS request for access and all materials to be disclosed pursuant thereto.

j. Document such disclosures of PHI as would be required for HEALTHeNET to respond, in accordance with the HIPAA Rules, to a request by any Individual for an accounting of disclosures of PHI in accordance with the requirements of the HIPAA Rules.

k. Upon 10 days' written notice by HEALTHeNET, make available or provide to HEALTHeNET or the Individual information collected in accordance with Section 2.1(j), to permit HEALTHeNET to respond, in accordance with the HIPAA Rules, to a request by an Individual for an accounting of disclosures of PHI. If an Individual makes a request for an accounting directly to Customer, Customer shall notify HEALTHeNET of the request within 3 business days of such request and will cooperate with HEALTHeNET and allow HEALTHeNET to send the response to the Individual.

l. Upon written notice by HEALTHeNET that the Underlying Contract will be terminated for any reason (including, for example, by virtue of HEALTHeNET's dissolution), return to HEALTHeNET or destroy and, unless return or destruction is infeasible, certify to HEALTHeNET in writing of any such destruction, within thirty (30) days of Customer's receipt of such notice, all PHI obtained from HEALTHeNET or created or obtained by Customer on behalf of HEALTHeNET with respect to the Underlying Contract, including such PHI that is in the possession of Customer's subcontractors and agents, and retain no copies if it is feasible to do so; provided, however, that prior to destroying or returning PHI, the Parties will meet and confer in order to reach a mutually satisfactory resolution with respect to the feasibility of destroying or returning the PHI and Customer's right to continued use and disclosure of the PHI. If return or destruction of the PHI is infeasible as reasonably determined Customer, Customer shall extend all protections contained in this Agreement to Customer's use and/or disclosure of any retained PHI, and limit any further uses and/or disclosures to the purposes set forth in Section 2.2 of this Agreement. This Provision shall apply to PHI that is in the possession of subcontractors or agents of Customer.

m. Comply with HITECH as applicable to Customer.

n. To the extent Customer is required to carry out HEALTHeNET's obligations under 45 C.F.R. subpart E, comply with the requirements of such subpart that apply to HEALTHeNET in the performance of such obligations, including, but not limited to, minimum necessary and document retention standards.

o. In receiving, storing, processing, or otherwise dealing with any "patient identifying information" or "records" as defined in 42 C.F.R. § 2.11, from an alcohol/drug abuse "program," as defined in 42 C.F.R. § 2.11, that is federally assisted in a manner described in 42 C.F.R. § 2.12(b), and that is operated by HEALTHeNET, to comply with and be fully

bound by the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

p. Resist in judicial proceedings any efforts to obtain access to “patient identifying information” or “records” as defined in 42 C.F.R. § 2.11 and as maintained by Customer, other than as permitted by the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

q. Comply with all applicable federal and state laws and regulations governing the confidentiality of information provided by HEALTHeNET including, without limitation, New York Public Health Law §§ 18 (Access to Patient Information) & 2780 et seq.; New York Mental Hygiene Law §§ 22.05 & 33.13; New York Civil Rights Law § 79-1; New York General Business Law §§ 399-dd (Confidentiality of Social Security Account Number), 399-h, & 899-aa; New York Civil Practice Law and Rules (CPLR) §§ 2302(a), 4504, 4507, 4508, & 4510 and CPLR R. 3122(a); chapter 5 of title 10 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (NYCRR); 10 NYCRR § 63.6(k); Federal Rules of Evidence R. 501; and 21 C.F.R. § 1304.24(d).

r. Pursuant to New York General Business Law § 899-aa(2)&(3) and in conformity with paragraph 2.1(a) of this Agreement, within 15 days’ after discovery thereof, notify HEALTHeNET of any “breach of the security of the system,” as defined in New York General Business Law § 899-aa(1)(c), that involves PHI containing individuals’ “private information,” as defined in New York General Business Law § 899-aa(1)(b), that was, or was reasonably believed to be, acquired from Customer by a person without valid authorization.

s. In the event Customer chooses to destroy the PHI in its possession in compliance with paragraph 2.1(l) of this Agreement, and that PHI contains “personal identifying information” as defined in New York General Business Law § 399-h(1)(d), dispose of such information in conformity with New York General Business Law § 399-h(2).

t. Not sell HEALTHeNET’s Protected Health Information without the prior written consent of HEALTHeNET.

u. Not use or disclose HEALTHeNET’s Protected Health Information for Customer’s Marketing purposes;

v. Not receive, maintain, store, access or transmit Protected Health Information outside of the United States and its territories without the prior written consent of HEALTHeNET.

2.2 Permitted Uses and Disclosures of PHI by Customer. Except as otherwise specified in this Agreement, Customer may use and disclose the PHI as reasonably necessary to perform its obligations under the Underlying Contract, provided that such use or disclosure does not

violate the HIPAA Rules or other applicable law and regulations. Unless otherwise limited herein, Customer may, only to the extent applicable:

a. Use the PHI in its possession for its proper management and administration of Customer and to carry out the legal responsibilities of Customer.

b. Disclose the PHI in its possession to a third party for the purpose of Customer's proper management and administration or to carry out the legal responsibilities of Customer, provided that the disclosures are required by law or Customer obtains written 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 purpose for which it was disclosed to the person, and the person notifies Customer of any instances of which it is aware in which the confidentiality of the information has been breached. Such written assurances shall include adherence to the same restrictions and conditions on use and disclosure as apply to Customer herein. HEALTHeNET acknowledges that such written assurances may differ in form, but will not differ in substance, from this Agreement.

c. Use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1). To the extent permitted by applicable law, prior to disclosing PHI as required by law to a law enforcement, regulatory, administrative, or oversight agency, or in response to a subpoena, court order, civil investigative demand, or other compulsory document or lawful process, Customer shall notify HEALTHeNET of such pending disclosure and provide reasonable time for HEALTHeNET to oppose such disclosure, should HEALTHeNET deem such opposition necessary; provided, however, that if HEALTHeNET does not respond to Customer regarding such opposition prior to the date on which such disclosure must be made, Customer may, in its own discretion, disclose PHI as required by law.

2.3 Obligations of HEALTHeNET. By acceptance hereof, HEALTHeNET agrees:

To notify Customer of any restriction, or change in any restriction, to the use or disclosure of Protected Health Information that HEALTHeNET or a Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Customer's use or disclosure of PHI.

To notify Customer of any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Customer 's use or disclosure of PHI.

Not to request Customer to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by HEALTHeNET.

2.4 Obligations Relating to MCD. The Parties understand and acknowledge that this Section 2.4 only applies if Customer shall be given access to MCD in the course of providing services to HEALTHeNET pursuant to the Underlying Contract.

The Federal Center for Medicare and Medicaid Services (CMS) requires that all contracts and/or agreements executed between the Department of Health and any second party that will receive MCD must include contract language that will bind such parties to ensure that contractor(s)/business associates abide by the regulations and laws that govern the protection of individual, Medicaid confidential level data. This notification requires that you include the following language in this contract and all future contracts that will govern the receipt and release of such confidential data:

*Medicaid Confidential Data/Protected Health Information (MCD/PHI) includes all information about a recipient or applicant, including enrollment information, eligibility data and protected health information. You must comply with the following state and federal laws and regulations:*

- *Section 367-b(4) of the NY Social Services Law*
- *New York State Social Services Law Section 369 (4)*
- *Article 27-F of the New York Public Health Law and 18 NYCRR 360-8.1*
- *Social Security Act, 42 USC 1396a (a)(7)*
- *Federal regulations at 42 CFR 431.302, 42 CFR Part 2*
- *The Health Insurance Portability and Accountability Act (HIPAA), and HITECH at 45 CFR Parts 160 and 164*
- *Section 33.13 of the New York State Mental Hygiene Law*

*Please note that MCD released to you may contain AIDS/HIV related confidential information as defined in Section 2780(7) of the New York Public Health Law. As required by New York Public Health Law Section 2782(5)(a), the following notice is provided to you:*

*"This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is NOT sufficient authorization for the release for further disclosure."*

*Alcohol and Substance Abuse Related Confidentiality Restrictions:*

*Alcohol and substance abuse information is confidential pursuant to 42 CFR Part 2. General authorizations are ineffective to obtain the release of such data. The federal regulations provide for a specific release for such data.*

*You agree to ensure that you and any agent, including a subcontractor/business associate, to whom you provide MCD/PHI, agrees to the same restrictions and conditions that apply throughout this Agreement. Further, you agree to state in any such agreement, contract or document that the party to whom you are providing the MCD/PHI may be required to provide their Business Associate Agreements to DOH and may be required to receive acknowledgement or written agreement from DOH prior to redisclosing the MCD. You agree to include the notices preceding, as well as references to statutory and regulatory citations set forth above, in any agreement, contract or document that you enter into that involves MCD/PHI.*

*Any agreement, contract, or document with a subcontractor/business associate must contain all of the above provisions pertaining to confidentiality. It must contain the HIV/AIDS notice as well as a statement that the subcontractor/business associate may not use or disclose the MCD without the prior written approval of DOH.*

*Any MCD provided under this Agreement shall not be accessed by employees, agents, representatives, or contractors/business associates who are located outside of the United States and its territories (offshore). Further, MCD shall not be received, stored, processed, or disposed via information technology systems which are located offshore.*

### 3. **TERMINATION**

3.1 **Termination Generally.** This Agreement shall terminate when all of the PHI obtained from HEALTHeNET or created or obtained by Customer on behalf of HEALTHeNET, is destroyed or returned to HEALTHeNET. If it is not feasible to return or destroy the PHI, protections are extended to such information in accordance with Section 2.1(I).

3.2 **HEALTHeNET's Right to Terminate for Cause.** Upon HEALTHeNET's knowledge of a material breach by Customer of the terms of this Agreement, HEALTHeNET shall either:

a. Provide an opportunity for Customer to remediate the material breach of the terms of this Agreement or end the violation. If Customer does not remediate the material breach of the terms of this Agreement or end the violation within the time specified by HEALTHeNET, HEALTHeNET shall terminate: (A) this Agreement; (B) all of the provisions of the Underlying Contract that involve the use or disclosure of PHI; and (C) such other provisions, if any, of the Underlying Contract as HEALTHeNET designates in its sole discretion;

b. If Customer has breached a material term of this Agreement and remediation is not possible, immediately terminate: (A) this Agreement; (B) all of the provisions of the Underlying Contract that involve the use or disclosure of PHI; and (C) such other provisions, if any, of the Underlying Contract as HEALTHeNET designates in its sole discretion.

4. **INDEMNITY**

Except as otherwise set forth herein, the indemnification and limitation of liability provisions applicable to this Agreement are set forth in the Underlying Contract.

5. **MISCELLANEOUS**

- 5.1 **Regulatory References.** A reference in this Agreement to a section in the HIPAA Rules or other applicable law means the section as in effect or as amended or modified from time to time, including any corresponding provisions of subsequent superseding laws or regulations.
- 5.2 **Interpretation.** The terms of this Agreement shall prevail in the case of any conflict with (a) Underlying Contract or (b) to the extent necessary to allow HEALTHeNET to comply with the HIPAA Rules and shall be construed in such a manner as to be permissible under the HIPAA Rules. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Rules, as amended, the HIPAA Rules shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this Agreement shall control.
- 5.3 **Survival.** Notwithstanding any other provision of this Agreement to the contrary, the terms of this Agreement shall survive its termination and continue indefinitely solely with respect to any PHI Customer retains in accordance with this Agreement.
- 5.4 **No Third Party Beneficiaries.** Except as expressly stated herein or the Privacy Rule, Customer and HEALTHeNET do not intend to create any rights in any third parties. Nothing in this Agreement shall confer upon any person other than Customer and HEALTHeNET and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 5.5 **Effect.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.
- 5.6 **Governing Law; Jurisdiction.** This Agreement shall be governed by the laws of the State of New York and shall be enforceable in the courts of the State of New York, Erie County, or in the United States District Court for the Western District of New York. Customer, and by acceptance hereof, HEALTHeNET, irrevocably submit to the exclusive jurisdiction of such courts.

- 5.7 Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary to comply with the HIPAA Rules and any other applicable law.
- 5.8 Terms. The terms of this Agreement are hereby incorporated into the Underlying Contract and supplement and/or amend the Underlying Contract as required (and only as required) to allow HEALTHeNET to comply with the HIPAA Rules and other applicable laws. The terms of the Underlying Contract that are not modified by this Agreement shall remain in full force and effect in accordance with the terms thereof. The Underlying Contract, this Agreement, and any amendments thereto, constitute the entire agreement of the parties with respect to the subject matter contained herein.
- 5.9 Ownership of PHI. Except as specified in Section 2.2 above or as otherwise agreed to in writing by both parties, as between HEALTHeNET and Customer, HEALTHeNET holds all right, title and interest in and to any and all PHI received by Customer from, or created or received by Customer on behalf of, HEALTHeNET, and Customer does not hold, and will not acquire by virtue of this Agreement or by virtue of providing any services or goods to HEALTHeNET, any right, title or interest in or to such PHI or any portion thereof.
- 5.10 Illegality. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.
- 5.11 Notices. Any notice, demand or communication required, permitted, or desired to be given hereunder, unless otherwise stated, shall be deemed effectively given when personally received by the intended recipient, and shall be sent by (a) express or overnight courier with proof of delivery; or (b) United States Postal Service, certified or registered mail with signed return receipt, addressed to the person or persons identified herein. Either Party may change the person and address to which notices or other communications are to be sent to it by giving written notice of any such change in the manner provided herein. The initial notification information is:



**Customer Addresses for Notice:**

**HEALTHeNET Addresses for Notice:**

WNYHEALTHeNET, LLC  
2475 George Urban Boulevard  
Suite 202  
Depew, NY 14043  
Attn: Steve Allen  
Privacy Officer

*with a copy to:*

Barclay Damon, LLP  
The Avant Building  
200 Delaware Avenue, Suite 1200  
Buffalo, New York 14202  
Attn: Herbert J. Glose, Esq.

- 5.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile and electronic copies thereof shall be deemed originals.
- 5.13 Independent Contractors. Notwithstanding any provision contained herein to the contrary, each of Customer and HEALTHeNET understand and agree that the parties hereto intend to act and perform as independent contractors and that therefore neither Customer nor HEALTHeNET is an employee, partner, joint venturer, of the other. Nothing in this Agreement shall be construed as placing the parties in a relationship of employer-employee, partners or joint venturers. Neither Customer nor HEALTHeNET shall have the right to make any promises, warranties or representations, or to assume or create any obligations, on behalf of the other party, except as otherwise expressly provided herein. Customer and HEALTHeNET agree to be solely and entirely responsible for their respective acts and, to the extent provided under the laws, for the acts of any of their respective officers, directors, employees, professional advisors (including accountants), contractors and other agents, except as otherwise expressly provided herein.

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IN WITNESS WHEREOF, the parties hereto have caused this Subcontractor Business Associate Agreement to be executed by their respective authorized signatories on the date first above written.

**WNYHEALTHeNET, LLC**  
**d/b/a HEALTHeNET**

**[CUSTOMER]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: Daniel E. Porreca

Print Name: \_\_\_\_\_

Title: Executive Director

Title: \_\_\_\_\_

Address: 2475 George Urban Blvd  
Suite 202  
Depew, NY 14225

Address: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_