A NOTE OF CAUTION

The document that follows is a SAMPLE agreement between an organization and an independent contractor. It details the expectations, protections and limitations of a hypothetical agreement between the two entities.

Obviously if your situation does not match the above assumptions, this document will be of limited use to you. But even if your situation seems to be compatible with the above assumptions, this document can only serve as a sample to give you ideas what you might want to negotiate with your chosen partner. You cannot simply copy this MOU and use it as-is. There are additional built-in assumptions that may or may not reflect how you will be contracting with an independent contractor. You need to read it carefully and use it as a guide, not a template.

You will need to create your own agreement if you will be entering into an agreement with an independent contractor. This document is intended for reference purposes only and DOES NOT constitute legal advice. Consult an attorney for any legal advice required to execute an agreement with a third Party.
INDEPENDENT CONTRACTOR AGREEMENT

**Named Program**

**THIS INDEPENDENT CONTRACTOR AGREEMENT** (this “Agreement”), effective the later of: (i) July 1, 2012; or (ii) such date as specified by the appropriate regulatory agency(ies), as applicable, regardless of the execution date hereof (the “Effective Date”), is by and between (“XXXXXX”) and YYYYYY (“Contractor”) for the purpose of setting forth the terms and conditions under which Contractor shall provide certain services to XXXXXX for its Medicaid (known as the XYZ Medicaid Program enrollees) benefit plan. Except as provided herein, for services provided on or after the Effective Date, this Agreement supersedes and replaces any and all other agreements, whether written or oral, between the parties regarding the subject matter contained herein. The parties agree that this Agreement shall be in addition to and separate from that certain participating provider agreement between XXXXXX and Contractor for purpose of the provision of covered services for XYZ Medicaid Program enrollees (“Consumers”) and Contractor’s provider network participation.

WHEREAS, Contractor is a medical group in THIS STATE that also provide certain health care field services and related care coordination services to assist enrollees upon hospital discharge as described more fully in Exhibit A attached hereto and made a part hereof (the “Services”);

WHEREAS, XXXXXX desires to hire Contractor to provide the Services as part of XXXXXX’s Named Program (the “Program”) for Consumers; and

WHEREAS, Contractor desires to be hired by XXXXXX to support and provide the Services for the Program for Consumers pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the terms and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, Contractor and XXXXXX hereby agree as follows:

**SECTION 1**

**CONTRACTOR SERVICES**

1.1 **Services.** Contractor shall perform the Services on behalf of XXXXXX as described and in accordance with Exhibit A.

1.2 **Subcontractors.** Contractor shall obtain XXXXXX’s written pre-approval before entering into subcontracts related to performance of the Services on behalf of XXXXXX. Contractor acknowledges and agrees that before any subcontractors provide Services on behalf of XXXXXX, such subcontractors shall be required to enter into a written agreement with Contractor which XXXXXX pre-approves, unless otherwise specified by XXXXXX. Upon XXXXXX’s request, all subcontractors may also be required to sign a statement in a form identical to Exhibit B, and Contractor shall provide to XXXXXX a copy of the signed statement. XXXXXX shall have the right to approve all subcontractors or any change in subcontractors assigned to perform Services on behalf of it. XXXXXX may, at any time in its sole discretion, require that subcontractors currently assigned to provide Services on behalf of it cease providing Services. Nothing in this Agreement shall be construed as a promise that any particular amount of work will be made available for any of Contractor’s subcontractors. Contractor is solely responsible for any payment of compensation and provision of benefits to its subcontractors and other personnel assigned to perform Services on behalf of the Services.
and shall indemnify and hold harmless XXXXXX from any claim for compensation or benefits from its subcontractors and other personnel.

1.3 **Timely and Satisfactory Performance.** Contractor shall be responsible for the timely and satisfactory performance by any and all of its subcontractors and personnel. None of Contractor’s subcontractors or personnel providing Services under this Agreement shall be deemed an employee of XXXXXX. All such personnel shall operate at all times under the complete direction and control of Contractor.

**SECTION 2**

**PAYMENT; PAYMENT TERMS**

For the Services to be performed under this Agreement, XXXXXX shall reimburse Contractor in accordance with the payment terms set forth in Exhibit A.

**SECTION 3**

**INFORMATION; BOOKS AND RECORDS**

3.1 **Confidential Business Information.** Each party acknowledges that in the course of performing under this Agreement, either party may learn or come into possession of certain confidential, trade secret, or proprietary information and documents of the other party (the “Confidential Information”). Confidential Information shall include, without limitation, all information furnished or made available by the parties in connection with this Agreement, whether prior or subsequent to the signing hereof, including but not limited to protected health information, as that term is defined in 45 CFR § 160.103 (“PHI”), any and all trade secrets, know-how, data, materials, products, technology, information systems and access thereto, computer programs and code, algorithms, formulas, processes, ideas, specifications, manuals, business plans and projections/forecasts, methods, techniques, software, marketing plans and studies, financial information, costs, pricing, discounts, claims data, product and service information, pricing information, sales information, vendor, customer, provider or member information and lists, and all other materials, whether written or oral, tangible or intangible with respect to this Agreement and the obligations of the respective parties and the services provided hereunder, whether or not such Confidential Information is designated as being confidential and which has not been publicly disclosed. Confidential Information may be disclosed to either party orally, in writing, by samples, by inspections, or in a tangible medium.

(a) With respect to Confidential Information, the parties agree as follows:

(i) To maintain the confidentiality of the other party’s Confidential Information, including, but not limited to, providing the same degree of care to avoid disclosure or unauthorized use of the other party’s Confidential Information as a party provides to its own confidential and proprietary information, and retaining the other party’s Confidential Information in a secure place with access limited to only those persons who have a need to know such information in connection with performance under this Agreement;

(ii) To direct their employees, agents, assigns, and subcontractors to maintain the confidentiality of all Confidential Information;

(iii) To not disclose to any third party, including but not limited to subcontractors, any Confidential Information of the other party, in whole or in part, without the other party’s prior
written permission, other than to employees, legal counsel, accountants and other representatives who: (a) have a need to know solely for the purpose of performance of this Agreement; and (b) have been bound by the confidentiality obligations set forth herein;

(iv) To not reproduce any Confidential Information of the other party in any manner without the other party’s prior written permission;

(v) To use the other party’s Confidential Information solely in connection with performance of this Agreement;

(vi) To not commercially or otherwise exploit the other party’s Confidential Information in any way or allow any third party to do so;

(vii) To return or certify as destroyed all copies of the other party’s Confidential Information when all services to be performed under this Agreement have been performed or if earlier, within ten (10) days, of any request by the other party to do so;

(viii) To immediately notify the other party of any information that comes to such party’s attention that indicates that there may have been a loss of confidentiality or unauthorized use of the other party’s Confidential Information; and

(ix) To indemnify and hold each other harmless from any and all losses which may result from unauthorized disclosure of the other party’s Confidential Information. Each party receiving any Confidential Information shall be fully liable and responsible to the party disclosing the same for any use thereof by any such person who receives it on the recipient party’s behalf, or any such person who discloses it, in all respects as though the recipient party has made such improper use of such information.

(b) All Confidential Information shall remain the property of the party disclosing it.

(c) If either party is ordered by a court of competent jurisdiction to produce the other party’s Confidential Information, such party shall promptly notify the other party and shall make all reasonable efforts to allow the other party an opportunity to seek a protective order or other judicial relief prior to any disclosure.

(d) The parties shall have no obligation to keep confidential information which: (i) on the date hereof is generally known to the public; (ii) subsequent to disclosure hereunder is lawfully received from a third party having rights therein without restriction of dissemination; (iii) prior to disclosure hereunder was within the legitimate possession of the receiving party and which can be confirmed by contemporaneous written documentation; or (iv) the release of which is authorized previously in writing by the other party.

(e) The parties acknowledge and agree that the disclosure of Confidential Information may result in irreparable harm to the non-disclosing party for which there is no adequate remedy at law. The parties therefore agree that in the event a party violates or threatens to violate the provisions of this Section, the other party is entitled to seek an injunction, and that no bond will be required. This remedy will be in addition to any other remedy available at law or equity.

(f) This Section shall survive any termination of this Agreement.
3.2 **Ownership of Work Product.** Contractor acknowledges that any work product of any type generated by Contractor and its personnel pursuant to this Agreement belongs solely to XXXXXX and Contractor hereby assigns and transfers to XXXXXX any and all rights which Contractor might have asserted to such work product, including any copyright, patent, trademark, trade secret, or other intellectual property rights. Contractor and its personnel shall cooperate with XXXXXX and shall execute any documentation required by XXXXXX to assert or protect its property rights in the work product. This Section shall survive any termination of this Agreement.

3.3 **XXXXXX Data.** If Contractor transmits, stores, or has access to any type of data for XXXXXX, Contractor shall not attempt to de-encrypt, capture, reassemble (if sent in packets), transport or view such data except as may be strictly necessary to provide services under this Agreement. As between XXXXXX and Contractor, XXXXXX shall at all times remain the exclusive owner of such data. In the event Contractor transports any devices (for warranty, maintenance, destruction or other purposes) which contain XXXXXX data, Contractor shall ensure all reasonable measures are taken to secure such devices so as to prevent any unauthorized disclosure while in transit and while at rest. Contractor shall also ensure that as soon as reasonably possible, such devices are destroyed or the information is permanently wiped/deleted, in all instances subject to any of XXXXXX’s records retention policies.

3.4 **Records.** Contractor shall maintain, and shall require any subcontractors to maintain, books and records that are usual and customary for the services provided under this Agreement. All such books and records shall be maintained in accordance with prudent standards of insurance industry recordkeeping and all applicable laws and regulations. Contractor shall preserve such records for at least ten (10) years after the date the records were created or such other period as required by applicable law or regulation, whichever is longer.

3.5 **Examination of Records.** Upon reasonable notice, during normal business hours and at a reasonable time and place, XXXXXX reserves the right to examine records of Contractor that directly pertain to Contractor’s obligations under this Agreement. XXXXXX agrees not to disrupt Contractor’s normal course of business while it or its designees conduct the examination, and will limit such examinations to once per annum; provided, however, that XXXXXX may conduct more frequent examinations if it has a good faith justification for doing so related to Contractor’s performance under this Agreement.

3.6 **Government Access to Records.** Federal, state, and local government agencies including, but not limited to, the U.S. Department of Health and Human Services, the U.S. Comptroller General, other state and federal officials, or their designees shall have the right to inspect, evaluate and audit, and XXXXXX and Contractor are authorized to release, all information and records or copies of such within the possession of XXXXXX or Contractor that are pertinent to and involve transactions related to this Agreement if such access is necessary to comply with statutes, regulations or accreditation standards applicable to XXXXXX or Contractor. The right to inspect, evaluate and audit any pertinent information for any particular contract period will exist through ten (10) years from the final date of the contract period or from the date of completion of any audit, whichever is later. Said government agencies may also evaluate, through inspection or other means, the quality, appropriateness and timeliness of services provided under this Agreement and compliance herewith.
SECTION 4
REGULATORY COMPLIANCE

4.1 General Use, Disclosure and Exchange of Information. In addition to Member health information or other individually identifiable information defined by 45 CFR § 160.103 as Protected Health Information (“PHI”), Contractor may acquire certain confidential and proprietary information of XXXXXX’s not generally available to the public. For purposes of this Agreement, XXXXXX’s confidential and proprietary information, as well as Member PHI, whether disclosed by XXXXXX or acquired by Contractor through activities related to the Program, may be referred to as “Confidential Information” collectively. Contractor shall not use or disclose Confidential Information, directly or indirectly, for purposes other than the Program without XXXXXX’s advance written consent. Contractor shall not have access to XXXXXX’s information systems, nor shall XXXXXX have access to Contractor’s information systems. Information exchanged shall generally be through secure email or other form of encrypted media. However, the Parties acknowledge that authorized representatives of each Party may also engage in discussions via telephone or in-person meetings. Under no circumstances shall Contractor disclose XXXXXX’s Confidential Information to XXXXXX competitors or any third parties (including other governmental agencies or subcontractors) unless on a need-to-know basis. Any such disclosure shall be subject to the obligations set forth in this Agreement, as applicable.

4.2 Use and Disclosure of PHI; HIPAA Compliance. All activities related to this Agreement shall adhere to state and federal confidentiality laws and regulations, including, without limitation the privacy provisions of HIPAA and the regulations promulgated thereunder, 45 C.F.R Parts 160 – 164, as amended from time to time. The Parties hereto acknowledge and accept their individual obligations to comply with the privacy regulations promulgated to implement HIPAA. Each party shall employ best efforts to implement HIPAA privacy requirements in a manner that allows for the effective exchange of all confidential Member information while complying with applicable confidentiality requirements. The parties acknowledge that certain federal or state laws may take precedence over HIPAA. In the event language found elsewhere in this Agreement conflicts with the intention stated herein, this paragraph takes precedence to direct the compliance of exchange of individual information.

Contractor shall comply with applicable HIPAA provisions set forth in the Business Associate Addendum attached hereto as Exhibit A. Contractor shall notify XXXXXX immediately in the event any activities by Contractor violateS the privacy regulations. These obligations shall survive termination of this Agreement.

4.3 Regulatory Appendices. Contract provisions that are necessary to comply with the legal or regulatory requirements of certain jurisdictions or regulatory agencies will be set forth in individual appendices attached to this Agreement and made a part hereof (the “Appendices”), including specifically Exhibit D attached hereto and made a part hereof. Contractor shall comply and shall require its personnel to comply with the applicable terms and conditions of such Appendices. In the event of a conflict between the provisions of the main body of this Agreement and an Appendix, the terms of the Appendix will control.

4.4 Regulatory Approval and Filing. In the event XXXXXX is required to file this Agreement with federal, state or local governmental authorities, XXXXXX shall be responsible for filing the Agreement with such authorities as required by any applicable law or regulation. If, following any such filing, the governmental authority requests changes to this Agreement, Contractor agrees to cooperate with XXXXXX in preparing the response to the governmental authority.
4.5 **Compliance with Laws.** Contractor and XXXXXXX agree to comply with all applicable federal, state and local laws in connection with the performance of their obligations under this Agreement. Contractor shall use commercially reasonable efforts to ensure all agents, employees, assigns and subcontractors that are involved in providing services hereunder also comply with this Section.

This Agreement shall automatically be amended as necessary to comply with applicable state and federal laws and regulations, including incorporation of any provisions now or hereafter applicable to the subject matter hereof and/or required to be included by any federal or state governmental authority with relevant jurisdiction over the subject matter hereof. Any such change or incorporation of legal and regulatory requirements shall be deemed incorporated herein, irrespective of whether or not such provisions are expressly set forth in this Agreement or any written amendment hereto.

**SECTION 5**

**TERM; TERMINATION**

5.1 **Term.** This Agreement shall commence on the Effective Date and shall remain in effect the later of (i) until December 31, 2012; or (ii) six (6) months after the Effective Date (“the Pilot Term”) unless otherwise terminated pursuant to Section 5.2, including specifically, by either party without cause as set forth in Section 5.2(b). After the expiration of the Pilot Term, the parties agree to negotiate the terms and conditions of the Services and shall amend this Agreement to reflect the parties renegotiation. Unless otherwise agreed to by the parties, any term that commences after the Pilot Term shall be based on automatic renewal for successive one (1) year terms unless otherwise terminated pursuant to Section 5.2.

5.2 **Termination.** This Agreement may be terminated as follows:

(a) By mutual written agreement of the parties; provided, however, that any termination may be subject to advanced written approval of any applicable regulatory agency.

(b) By either party with or without cause upon at least ninety (90) days prior written notice to the other party, subject to subsections (c) – (f) below.

(c) A material breach of any provision of this Agreement by either party (the “Breaching Party”) shall entitle the other party (the “Non-breaching Party”) to give notice of the breach to the Breaching Party specifying the nature of the breach and requiring the Breaching Party to cure such breach within thirty (30) days of such notice (the “Cure Period”). If during the Cure Period, the breach is not cured or the parties do not otherwise resolve the breach, the Non-breaching Party may terminate this Agreement by delivering a second notice to the Breaching Party, specifying a termination date. The termination date may be immediate upon delivery of the second notice or up to thirty (30) days after the second notice.

(d) By either party, immediately upon written notice to the other party in the event either party becomes insolvent or is adjudicated as a bankrupt entity, or its business comes into possession or control, even temporarily, of any trustee in bankruptcy, or a receiver is appointed for it, or it makes a general assignment for the benefit of creditors, unless the other party elects in writing to forego termination of this Agreement.

(e) By either party, immediately upon written notice to the other party, in the event of the other party’s loss or suspension of material licensure, certification or other governmental authorization necessary to perform under this Agreement, or loss of insurance.

(f) If required by a state or federal regulatory agency with jurisdiction over this Agreement.
Upon notice of termination of this Agreement given by one party to the other, XXXXXX shall pay all fees owed Contractor under this Agreement for Services performed through the effective date of termination and Contractor shall provide Services until the effective date of the termination.

SECTION 6
INSURANCE

To the extent applicable during the term of this Agreement, Contractor shall maintain and shall require any subcontractors to maintain, at Contractor’s (or subcontractor’s) sole cost and expense, commercial general liability insurance, including contractual liability, in the amount of $1,000,000 per occurrence and $2,000,000 aggregate; auto liability for $1,000,000 combined single limit, workers compensation and employer’s liability with limits of $500,000; coverage for valuable papers in the care, custody or control of Contractor in the amount of $100,000; professional liability insurance, including errors and omissions, in the amount of $1,000,000 per occurrence and $2,000,000 in aggregate; and a fidelity bond/crime coverage, including computer fraud coverage, in the amount of $50,000. Contractor shall provide proof of such insurance upon request and shall give ten (10) days written notice to XXXXXX in the event of any termination, cancellation or material change in such insurance. Such insurance shall not derogate Contractor’s indemnity obligations to XXXXXX set forth in this Agreement. Further, approval or acceptance of such by XXXXXX will not in any way represent that such insurance is sufficient or adequate to protect Contractor’s interests or liabilities and such insurance coverage shall be considered the minimum acceptable coverage.

SECTION 7
INDEMNIFICATION

To the maximum extent allowed by law, Contractor shall defend, indemnify and hold harmless XXXXXX and its directors, officers, employees, and agents (collectively, the “Indemnites”) from and against any and all claims, losses, damages, suits, fees, judgments, costs and expenses (collectively referred to as “Claims”), including attorneys’ fees incurred in responding to such Claims, that the Indemnites may suffer or incur arising out of or in connection with Contractor’s: (i) material breach of this Agreement; (ii) willful misconduct or reckless or grossly negligent act or omission related to or in connection with performance under this Agreement; or (iii) other violation of applicable law.

SECTION 8
DISPUTE RESOLUTION

XXXXXX and Contractor shall work together in good faith to resolve any and all disputes (each, a “Dispute” and collectively, the “Disputes”) that arise between them relating to this Agreement. If the parties are unable to resolve any such Dispute within thirty (30) days following the date one party sent written notice of the Dispute to the other party and if either party wishes to further pursue resolution of the Dispute, that party shall refer the Dispute to mediation before resorting to litigation or any other dispute resolution procedure hereunder. Such mediation must be initiated within sixty (60) days of the date one party first gave written notice of the Dispute to the other party. An independent and impartial mediator jointly selected by the parties who is qualified by education, training, and experience to hear matters in the nature of the Dispute shall conduct the mediation under the then current Commercial Mediation Rules of the American Arbitration Association (“AAA”) unless the mediator otherwise determines to use other rules and practices. The mediation shall be held in a mutually agreeable site and, unless otherwise agreed, the parties shall bear the cost of the mediation equally between them. Other than with respect to its occurrence or the failure to occur, the mediation shall be in all respects confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.
If the parties are not able to resolve the Dispute through the mediation process described above within ninety (90) days of referring the matter to mediation, the Dispute shall be resolved through binding arbitration in accordance with the then current AAA Commercial Rules for disputes. As determined by the mutual agreement of the parties, the Dispute shall be heard and determined by either: (a) an independent and impartial arbitrator jointly selected by the parties who is qualified by education, training, and experience to hear and determine matters in the nature of the Dispute; or (b) an arbitral panel consisting of three (3) arbitrators, each of whom shall be independent and impartial. In the event the parties mutually agree to have an arbitral panel, each party shall, within thirty (30) days after commencement of the arbitration, select one person to act as arbitrator. The two arbitrators so selected shall, within fifteen (15) days of their appointment, select a third arbitrator who shall serve as the chairperson of the arbitral panel. The arbitrators selected shall be qualified by education, training, and experience to hear and determine matters in the nature of the Dispute. If a party fails to appoint an arbitrator as provided herein, or if the arbitrators selected by the parties are unable or fail to agree upon a third arbitrator within twenty (20) days of their appointment, then that arbitrator shall be selected and appointed in accordance with the AAA Commercial Rules. The arbitrator(s) shall be bound by and shall follow the then current ABA/AAA Rules of Ethics for Arbitrators.

Any arbitration proceeding under this Agreement shall be conducted in the state and county XXXXXXX designates. The arbitrator(s) may construe or interpret but shall not vary or ignore the terms of this Agreement, and shall be bound by controlling law. The arbitrator(s) shall have no authority to award punitive, exemplary, indirect or special damages, except in connection with a statutory claim that explicitly provides for such relief. The decision of the arbitrator(s) on the points in dispute will be binding, and judgment on the award may be entered in any court having jurisdiction thereof. The parties acknowledge that because this Agreement affects interstate commerce, the Federal Arbitration Act applies.

Unless otherwise agreed to by both parties, the parties expressly intend that any Dispute relating to the business relationship between them be resolved on an individual basis so that no other dispute with any third party(ies) may be consolidated or joined with the Dispute related to this Agreement. The parties agree that any arbitration ruling by an arbitrator allowing class action arbitration or requiring consolidated arbitration involving any third party(ies) would be contrary to their intent and would require immediate judicial review of such ruling.

In the event that any portion of this Section or any part of this Agreement is deemed to be unlawful, invalid or unenforceable, such unlawfulness, invalidity or unenforceability shall not serve to invalidate any other part of this Section or Agreement. In the event any court determines that this arbitration procedure is not binding or otherwise allows litigation involving a Dispute to proceed, the parties hereby waive any and all right to trial by jury in, or with respect to, such litigation. Such litigation would instead proceed with the judge as the finder of fact.

Unless the parties agree otherwise, the parties, the arbitrator(s), and the AAA shall treat the dispute resolution proceedings provided for herein, any related disclosures, and the decisions of the arbitrator(s) as confidential, except in connection with judicial proceedings ancillary to the dispute resolution proceedings, such as a judicial challenge to, or enforcement of, the arbitral award, and unless otherwise required by law to protect a legal right of a party.

In the event a party wishes to terminate this Agreement based on an assertion of uncured material breach, and the other party disputes whether grounds for such a termination exist, the matter will be resolved in accordance with this Section. While the mediation or arbitration provided for hereunder remains pending, the termination for breach will not take effect.
This Section shall govern any Dispute between the parties arising before or after execution of this Agreement and shall survive any termination of this Agreement.

SECTION 9
MISCELLANEOUS

9.1 Assignment; Change of Control. Except as provided in this Section, neither party shall assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other party; provided, however, that a party may assign, sell, transfer, delegate or otherwise dispose of this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other party solely in connection with a change of control, including merger, consolidation, corporate reorganization, sale of all or substantially all of such party’s assets or stock, spin-off, change of name or like event, wherein the assignee agrees in writing to be bound by all terms and conditions of this Agreement; provided, however, that such surviving corporation or acquirer shall assume all obligations of such party and shall display to the other party’s reasonable satisfaction such party’s ability to perform such obligations. In addition, XXXXXXX shall have the right to assign, sell, delegate or transfer any or all of its rights and responsibilities under this Agreement to any entity that controls, is controlled or managed by, or is under common control with XXXXXXX. Any purported assignment, sale, transfer, delegation or other disposition by a party, except as permitted herein, shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.

9.2 Delegation and Oversight. In compliance with the delegation and oversight obligations imposed on XXXXXXX under its contracts with state and/or federal regulatory agencies, XXXXXXX reserves the right to revoke any functions or activities delegated to Contractor under this Agreement, if in XXXXXXX’s reasonable judgment Contractor’s performance under this Agreement does not comply with XXXXXXX’s obligations under its government contracts. This right shall be in addition to XXXXXXX’s termination rights under this Agreement.

9.3 Entire Agreement and Amendment. This Agreement, which incorporates all exhibits, attachments, addenda, and appendices hereto, constitutes the entire agreement between the parties in regard to its subject matter. Any amendment or modification to this Agreement must be in writing and signed by both Contractor and XXXXXXX, except that XXXXXXX may amend this Agreement unilaterally to comply with the requirements of state and federal regulatory authorities, and shall give written notice to Contractor of such amendment and its effective date. The headings and titles within this Agreement are for convenience only and shall have no legal effect.

9.4 Incorporation of Other Legal Requirements. Any provisions now or hereafter required to be included in the Agreement by any federal or state governmental authority with competent jurisdiction over the subject matter hereof shall be binding upon and enforceable against the parties hereto and deemed incorporated herein, irrespective of whether or not such provisions are expressly set forth in this Agreement.

9.5 Relationship of the Parties. The sole relationship of the parties is that of independent contractors and nothing in this Agreement or otherwise shall be deemed or construed to create any other relationship, including one of employment, joint venture, or agency. Contractor shall be solely responsible for any taxes of any type, including social security taxes, workers’ compensation taxes or costs, unemployment compensation taxes or costs, or any other similar taxes, costs, or charges or any other taxes or charges related to Contractor’s or Contractor’s employees’ or subcontractors’ receipt of compensation and
performance of Services under this Agreement, and shall indemnify and hold XXXXXX harmless against any such taxes or charges. This Section shall survive any termination of this Agreement.

9.6 No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the parties hereto and no third parties shall have any rights hereunder, or interest herein, except as explicitly provided herein.

9.7 Excluded Individuals. Neither Contractor nor XXXXXX shall employ or contract with any individual or entity that is excluded from participation in Medicare or a state health care program or with an entity that employs or contracts with such an individual or entity.

9.8 Arm’s Length Negotiations, etc. The parties acknowledge that the terms of this Agreement are fair and reasonable, were negotiated at arm’s length, and that they were given ample opportunity to review and consider this Agreement prior to execution. Each party has taken all action necessary for the authorization, execution, delivery and performance of this Agreement.

9.9 Press Releases; Marketing; Advertising; Use of Names and Trademarks. During the term of this Agreement, a party shall have the right to make public reference to the other party by name in an accurate, factual manner, as being involved with this Agreement. The parties shall not otherwise use the other party’s name, trademarks, or service marks without prior written consent from the other party. The parties mutually agree to provide, at a minimum, at least forty-eight (48) hours advance notice and opportunity to comment on all press releases, advertisements or other media statements and communications regarding this Agreement, the services provided hereunder or the business relationship between the parties. A party shall obtain the other party’s written consent prior to any publication or use of such materials or communications. Nothing herein shall be construed to create a right or license to make copies of any copyrighted materials.

9.10 Notices. Any notice, demand, or communication required under this Agreement shall be in writing, except in cases in which this Agreement specifically permits electronic notice. Notices sent by personal delivery, facsimile transmission or electronic communication shall be deemed given upon independent verification of receipt. Notices sent via commercial messenger service overnight delivery shall be deemed given on the next business day. Notices sent by first-class XXXXXX States mail shall be deemed given three (3) business days from the date mailed, proper postage prepaid and properly addressed to the appropriate party at the address set forth below or to another more recent address of which the sending party has received written notice. Notwithstanding the previous sentence, all notices of termination of this Agreement must be sent by certified mail, return receipt requested. Each party shall provide the other with proper addresses, facsimile numbers and electronic mail addresses of all designees that should receive certain notices or communication instead of that party. The addresses and individuals to which notices are sent may be changed by proper notice in accordance with the procedures outlined in this Section.

Notices to XXXXXX:
ADDRESS HERE
CITY, STATE, ZIP
Attn: Network Management

With a copy to:
XXXXXX
Attn: Contracts Department, Senior
Associate General Counsel
ADDRESS HERE
CITY, STATE, ZIP
9.12 **Governing Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of ABC, without giving effect to the conflicts of law principles thereof. The sole jurisdiction and venue for actions arising out of, or related to, this Agreement shall be in the state and federal courts in ABC.

9.13 **Waiver.** The failure or delay of either party to insist upon the strict observance or performance of any provision of this Agreement or to exercise any right or remedy shall not impair or waive any such right or remedy. Nothing in this Agreement shall be deemed waived by either party unless the party claiming the waiver receives the waiver in writing signed by an authorized signatory of the other party. A waiver of one provision does not constitute a waiver of any other.

9.14 **Survival of Terms.** Any provisions of this Agreement that, by their nature, extend beyond the expiration or termination of this Agreement shall survive the termination of this Agreement and shall remain in full force and effect until all such obligations are satisfied. Any provision of the attached exhibits to this Agreement that contemplates performance, observance, or enforcement subsequent to the termination of this Agreement shall survive termination and remain in full force and effect between the parties until such obligations are satisfied.

9.15 **Severability.** In the event that any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be illegal, invalid, or unenforceable, such provision shall be modified to the extent necessary to make it enforceable or, if necessary, shall be inoperative, and the remainder of this Agreement shall remain in full force and effect and binding upon Contractor and XXXXXX.

9.16 **Force Majeure.** The obligations of a party under this Agreement, other than the payment of money, will be suspended for the duration of any force majeure applicable to that party. The term “force majeure” means any cause not reasonably within the control of the party claiming suspension, including, without limitation, an act of God; industrial disturbance; any mass viral, bacterial, or other microbial or biologic outbreak, including an epidemic or pandemic; war; riot; invasion; acts of a foreign enemy; terrorist actions; weather-related disaster; earthquake; and governmental action. A party claiming suspension under this Section shall use its best efforts to resume performance as soon as possible.

9.17 **Exclusion of Damages; Remedies.** NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, EVEN IF SUCH DAMAGES WERE FORESEEABLE, PROVIDED THAT THIS EXCLUSION WILL NOT APPLY TO DAMAGES CAUSED BY A PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR OTHERWISE PAYABLE FOR VIOLATION OF THE CONFIDENTIALITY, INDEMNIFICATION OR HIPAA AND GLB SECTIONS AND/OR EXHIBITS OF THIS AGREEMENT. The remedies specified in this Agreement are cumulative and in addition to any remedies available at law or in equity.
[SIGNATURE PAGE FOLLOWS. THIS AGREEMENT MAY BE EXECUTED IN COUNTERPARTS AND SENT VIA .PDF or FACSIMILE.]
IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

XXXXXX

CONTRACTOR

By ______________________________

By ________________________________

Print Name _________________________

Print Name __________________________

Print Title __________________________

Print Title ____________________________

EIN#_________________________________
Those Exhibits checked below shall apply to this Agreement:

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EXHIBIT A
SERVICES ADDENDUM

Contractor’s Obligations. Contractor shall:

- Provide staff to support the Program, which includes the following types of duly-licensed practitioners: nurse practitioners, registered nurses, and community health workers.
- Provide the Services for a duration of four (4) weeks per Customer unless otherwise specified by XXXXXXX.
- Perform the following Services in the required timeframes:
  - 48 hours pre-discharge: The advanced practice nurse and community health worker will conduct a detailed assessment in the Customer’s hospital. This includes medication reconciliation, ability to self manage disease, and access to primary care physician (PCP) assessment.
  - 72-hours post discharge: Send Customer a disease management plan that XXXXXXX has approved in advance.
  - 7 days post-discharge: Ensure each Customer receives a PCP visit. Such PCP visit shall be authorized by XXXXXXX. In no instance shall Contractor be allowed to self-refer a Customer to Contractor’s facility or PCPs. XXXXXXX shall retain independent review, determination and approval of all care coordination efforts, including specifically PCP referrals for Customers.
  - 3 weeks post-discharge: Contact Customers by phone or in-person to assess their adherence to the disease management plan.
  - 4 week post-discharge: provide face-to-face contact via Contractor’s community health workers to assess compliance with the disease management plan.
- Send XXXXXXX all aggregated Customer information on no less than a weekly basis in a format and with the desired content preapproved by XXXXXXX.
- Work to develop compatibility with the CareOne system so that XXXXXXX can exhibit credit and involvement with the Program.
- Train all staff providing the Services at Contractor’s facility. Such content shall be approved by the state’s Department of Public Health.
- Ensure that the community health workers work in conjunction with the nurses and nurse practitioners and ensure such workers are targeted by the population in which they reside.
- Assume any and all responsibility in managing any subcontractors or third-party relationships (e.g., if community health workers are not employees of Contractor) necessary to carry out Contractor’s obligations under this Agreement, including, but not limited to, any liability or obligations that may arise due to such delegation.
- Obtain XXXXXXX’s preapproval of any material subdelegation of a function for which Contractor is responsible under this Agreement, including advance notice regarding any material subcontractors.
- Support XXXXXXX upon request in promoting the Program, which shall be subject to the parties’ mutual agreement (e.g., the method of promotion, FTE allocation, expense, time and materials, et al.).
- Provide XXXXXXX with a monthly invoice with detailed charges pursuant to XXXXXXX’s specifications.
- Accept as payment in full the fee for the Services pursuant to the payments terms provided below.
- Provide XXXXXXX with any supporting documentation as requested to validate each monthly invoice and/or allow XXXXXXX to audit such records and documentation (at XXXXXXX’s own
expenses) if such invoices are inconsistent with XXXXXX’s own substantiation of accrued charges and/or costs.

XXXXXX’s Obligations. XXXXXX shall:

- Provide Contractor with a list of eligible Consumers and any changes each month, if applicable.
- Educate Consumers by mail and otherwise inform Consumers of the Program.
- Provide Consumers with phone support to answer questions about the Program.
- Pay Contractor pursuant to the payment terms below.
- Obtain proper regulatory approval of the Program.

Payment; Payment Terms. XXXXXX shall pay Contractor $_______ per Customer whom XXXXXX has identified as eligible for the Program. Contractor shall provide XXXXXX a monthly invoice of charges. XXXXXX shall pay Contractor within forty-five (45) to sixty (60) days after receipt of each undisputed invoice during the term of this Agreement. XXXXXX reserves the right to dispute an invoice but shall use best efforts to resolve such dispute with Contractor within no less than ninety (90) days of such receipt. Any unresolved dispute shall be subject to the arbitration provision(s) of this Agreement.

The payments set forth in this Section shall constitute payment in full for any and all services that Contractor performs for the Program and under this Agreement. In no way shall XXXXXX be liable for any third-party expenses, charges, costs, causes of action or other claims that may arise through Contractor’s subcontractors or other third-party relationships in the performance of the services hereunder.

Contractor understands and agrees that the purpose of this Program is to further the health care and well-being of its eligible Consumers who are medically at risk and in no way is any payment under this Agreement intended as an incentive for referrals of federal healthcare program business or means by which to allow Contractor to self-refer Consumers to Contractor’s facility or staff.

No Cost to Consumer. Contractor agrees to administer the Program without imposing any charge or cost to said Consumers. Contractor shall be strictly prohibited from balance billing the Consumer for any services or products related to the Program or this Agreement.
I, on behalf of <<insert legal name of Contractor’s subcontractor>> (“Subcontractor”) acknowledge that Subcontractor has been assigned to provide services for <<insert legal name of Contractor that is a party to this Agreement>> (“Contractor”) on behalf of XXXXXX and agrees to be bound by all terms of the contract between XXXXXX and Contractor, including the terms relating to HIPAA, confidentiality and work product. With respect to confidentiality, Subcontractor acknowledges that in the course of providing services for Contractor on behalf of XXXXXX it may become aware of or come into possession of certain confidential or proprietary information and documents of XXXXXX’s. Subcontractor shall not copy any such information without XXXXXX’s prior written permission, shall not disclose the information to any other person, shall not use the information for any purpose other than performing services to XXXXXX, and shall return all copies of any such information when Subcontractor’s services to Contractor on behalf of XXXXXX cease. Subcontractor understands that any and all property rights, including intellectual property rights, in any work product Subcontractor prepares for Contractor on behalf of XXXXXX shall belong solely to XXXXXX, and Subcontractor shall not assert or attempt to assert any rights of any type to such work product.

Subcontractor also agrees not to assert any claim for compensation or benefits from XXXXXX and to look solely to Contractor for all purposes, including any compensation or benefits Subcontractor believes it is due.

I, on behalf of Subcontractor, acknowledge Subcontractor is a duly appointed representative of Contractor, that this Statement shall be provided to XXXXXX, and that XXXXXX is relying on it in allowing Subcontractor to perform services for Contractor on behalf of XXXXXX.

<<Legal Name of Subcontractor>>

By: _____________________________

Print Name: _____________________________

Print Title: _____________________________

Date: _____________________________
EXHIBIT D

STATE REGULATORY REQUIREMENTS APPENDIX

SEE ATTACHED DOCUMENT.
This Business Associate Addendum (this “Addendum”) supplements the Confidentiality, Data Use & Collaboration Agreement to which this Addendum is attached (the “Agreement”) between Contractor (referred to as “Business Associate” in this Addendum) and XXXXXXX (referred to as “Covered Entity” in this Addendum), (each a “Party” and collectively the “Parties”). This Addendum is intended to comply with applicable obligations under Title V of the Gramm-Leach-Bliley Act ("GLBA"), (15 U.S.C. sec. 6801 et seq.) and implementing insurance commissioner regulations applicable to Covered Entity's relationship with "nonaffiliated third party service providers" to ensure the integrity and confidentiality of nonpublic personal information ("NPI") that Business Associate may create or receive for or from Covered Entity.

The Parties hereby agree as follows:

1. DEFINITIONS

1.1 Unless otherwise specified in this Addendum, all capitalized terms used in this Addendum not otherwise defined in this Addendum or otherwise in the Agreement have the meanings established for purposes of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (collectively, “HIPAA”) and ARRA, as each is amended from time to time. Capitalized terms used in this Addendum that are not otherwise defined in this Addendum and that are defined in the Agreement shall have the respective meanings assigned to them in the Agreement. To the extent a term is defined in both the Agreement and in this Addendum, HIPAA or ARRA shall govern.

1.2 “Affiliate” for purposes of this Addendum, shall mean any entity that is a subsidiary of XXXXXXXHealth Group.

1.3 “ARRA” shall mean Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, 42 U.S.C. §§17921-17954, and any and all references in this Addendum to sections of ARRA shall be deemed to include all associated existing and future implementing regulations, when and as each is effective.

1.4 “Breach” shall mean the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule that compromises the security or privacy of the PHI as defined, and subject to the exceptions set forth, in 45 C.F.R. 164.402.

1.5 “Compliance Date” shall mean, in each case, the date by which compliance is required under the referenced provision of ARRA and/or its implementing regulations, as applicable; provided that, in any case for which that date occurs prior to the effective date of this Addendum, the Compliance Date shall mean that effective date of this Addendum.

1.6 “Electronic Protected Health Information” (“ePHI”) shall mean PHI as defined in Section 1.7 that is transmitted or maintained in electronic media.

1.7 “PHI” shall mean Protected Health Information, as defined in 45 C.F.R. § 160.103, and is limited to the Protected Health Information received from, or received or created on behalf of, Covered Entity by Business Associate pursuant to performance of the Services.
1.8 “Privacy Rule” shall mean the federal privacy regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, codified at 45 C.F.R. Parts 160 and 164 (Subparts A & E).

1.9 “Security Rule” shall mean the federal security regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, codified at 45 C.F.R. Parts 160 and 164 (Subparts A & C).

1.10 “Services” shall mean, to the extent and only to the extent they involve the creation, use or disclosure of PHI, the services provided by Business Associate to Covered Entity under the Agreement, as amended by written agreement of the Parties from time to time.

2. RESPONSIBILITIES OF BUSINESS ASSOCIATE

With regard to its use and/or disclosure of PHI, Business Associate agrees to:

2.1 use and/or disclose PHI only as necessary to provide the Services, as permitted or required by this Addendum, and in compliance with each applicable requirement of 45 C.F.R. § 164.504(e) or as otherwise Required by Law.

2.2 implement and use appropriate administrative, physical and technical safeguards to (i) prevent use or disclosure of PHI other than as permitted or required by this Addendum; (ii) reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that Business Associate creates, receives, maintains, or transmits on behalf of the Covered Entity; and (iii) as of the Compliance Date of 42 U.S.C. § 17931, comply with the Security Rule requirements set forth in 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316.

2.3 without unreasonable delay, and in any event on or before the next business day after the date of its discovery by Business Associate, report to Covered Entity: (i) any use or disclosure of PHI not provided for by this Addendum of which it becomes aware in accordance with 45 C.F.R. § 164.504(e)(ii)(C); and/or (ii) any Security Incident of which Business Associate becomes aware in accordance with 45 C.F.R. § 164.314(a)(2)(C).

2.4 without unreasonable delay, and in any event on or before the next business day after the date of its discovery by Business Associate, notify Covered Entity of any incident that involves an unauthorized acquisition, access, use, or disclosure of PHI, even if Business Associate believes the incident will not rise to the level of a Breach. The notification shall include, to the extent possible, and shall be supplemented on an ongoing basis with: (i) the identification of all individuals whose Unsecured PHI was or is believed to have been involved, (ii) all other information reasonably requested by Covered Entity to enable Covered Entity to perform and document a risk assessment in accordance with 45 C.F.R. Part 164, subpart D with respect to the incident to determine whether a Breach of Unsecured PHI occurred, and (iii) all other information reasonably necessary to provide notice to individuals, HHS and/or the media, all in accordance with the data breach notification requirements set forth in 42 U.S.C. § 17932 and 45 C.F.R. Parts 160 & 164 subparts A, D, & E as of their respective Compliance Dates. Notwithstanding the foregoing, in Covered Entity’s sole discretion and in accordance with its directions, Business Associate shall conduct, or pay the costs of conducting, an investigation of any incident required to be reported under this Section 2.4 and shall pay the costs of providing, the required notices as set forth in this Section 2.4 or as may be required by state law and/or state and federal regulatory agencies.
2.5 require all of its subcontractors and agents that create, receive, maintain, or transmit PHI to agree, in writing, to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate; including but not limited to the extent that Business Associate provides ePHI to a subcontractor or agent, it shall require the subcontractor or agent to implement reasonable and appropriate safeguards to protect the ePHI consistent with the requirements of this Addendum and including, at a minimum, compliance with the requirements of Section 2.4.

2.6 make available its internal practices, books, and records relating to the use and disclosure of PHI to the Secretary for purposes of determining Covered Entity’s compliance with the Privacy Rule.

2.7 document, and within thirty (30) days after receiving a written request from Covered Entity, make available to Covered Entity information necessary for Covered Entity to make an accounting of disclosures of PHI about an Individual or, when and as directed by Covered Entity, make that information available directly to an Individual, all in accordance with 45 C.F.R. § 164.528 and, as of its Compliance Date, in accordance with the requirements for accounting for disclosures made through an Electronic Health Record in 42 U.S.C. 17935(c).

2.8 provide access to Covered Entity, within thirty (30) days after receiving a written request from Covered Entity, to PHI in a Designated Record Set about an Individual, or when and as directed by Covered Entity, provide that access directly to an Individual, all in accordance with the requirements of 45 C.F.R. § 164.524.

2.9 notwithstanding Section 2.8, in the event that Business Associate in connection with the Services uses or maintains an Electronic Health Record of PHI of or about an Individual, then Business Associate shall provide an electronic copy (at the request of Covered Entity, and in the reasonable time and manner requested by Covered Entity) of the PHI to Covered Entity or, when and as directed by Covered Entity, directly to an Individual or a third party designated by the Individual, all in accordance with 42 U.S.C. § 17935(e) as of its Compliance Date.

2.10 to the extent that the PHI in Business Associate’s possession constitutes a Designated Record Set, make available, within thirty (30) days after a written request by Covered Entity, PHI for amendment and incorporate any amendments to the PHI as directed by Covered Entity, all in accordance with 45 C.F.R. § 164.526.

2.11 accommodate reasonable requests for confidential communications in accordance with 45 C.F.R. § 164.522(b), as directed by Covered Entity.

2.12 notify Covered Entity in writing within three (3) days after its receipt directly from an Individual of any request for an accounting of disclosures, access to, or amendment of PHI or for confidential communications as contemplated in Sections 2.7-2.11.

2.13 request, use and/or disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure; provided, that Business Associate shall comply with 42 U.S.C. § 17935(b) as of its Compliance Date.

2.14 not directly or indirectly receive remuneration in exchange for any PHI as prohibited by 42 U.S.C. § 17935(d) as of its Compliance Date.

2.15 not make or cause to be made any communication about a product or service that is prohibited by 42 U.S.C. § 17936(a) as of its Compliance Date.
2.16 not make or cause to be made any written fundraising communication that is prohibited by 42 U.S.C. § 17936(b) as of its Compliance Date.

2.17 mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate that is not permitted by the requirements of this Addendum.

2.18 comply with all applicable federal, state and local laws and regulations.

2.19 not use, transfer, transmit, or otherwise send or make available, any PHI outside of the geographic confines of the XXXXXX States of America without Covered Entity’s advance written consent.

2.20 Government Program Requirements. To the extent that Business Associate receives, uses or discloses PHI pertaining to individuals enrolled in managed care plans through which Covered Entity or one or more of its Affiliates participate in government funded health care programs, receipt use and disclosure of the PHI pertaining to those individuals shall comply with the applicable program requirements.

2.21 Privacy and Safeguards for Financial Data. Business Associate understands and acknowledges that to the extent it is a nonaffiliated third party service provider under the GLBA and that, in the performance of the Services, Business Associate creates or receives NPI, Business Associate (i) shall not use or disclose NPI for any purpose other than to perform the Services, (ii) shall implement proper administrative, technical, and physical safeguards designed to ensure the security and confidentiality of the NPI, protect against any anticipated threats or hazards to the security or integrity of the NPI and protect against unauthorized access to or use of the NPI that could result in substantial harm or inconvenience to any Individual; and (iii) shall, for as long as Business Associate has NPI, provide and maintain proper safeguards for the NPI in compliance with this Addendum and the GLBA.

3. OTHER PERMITTED USES AND DISCLOSURES OF PHI

Unless otherwise limited in this Addendum, in addition to any other uses and/or disclosures permitted or required by this Addendum, Business Associate may:

3.1 use and disclose to subcontractors and agents the PHI in its possession for its proper management and administration or to carry out the legal responsibilities of Business Associate, provided that any third party to which Business Associates discloses PHI for those purposes provides written assurances in advance that: (i) the information will be held confidentially and used or further disclosed only as Required by Law; (ii) the information will be used only for the purpose for which it was disclosed to the third party; and (iii) the third party promptly will notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached.

4. TERMINATION AND COOPERATION

4.1 Termination. If either Party knows of a pattern of activity or practice of the other Party that constitutes a material breach or violation of this Addendum then the non-breaching Party shall provide written notice of the breach or violation to the other Party that specifies the nature of the breach or violation. The breaching Party must cure the breach or end the violation on or before thirty (30) days after receipt of the written notice. In the absence of a cure reasonably satisfactory to the non-breaching
Party within the specified timeframe, or in the event the breach is reasonably incapable of cure, then the non-breaching Party may do the following:

(i) if feasible, terminate the Agreement, including this Addendum; or

(ii) if termination of the Agreement is infeasible, report the issue to HHS.

4.2 Effect of Termination or Expiration. Within thirty (30) days after the expiration or termination for any reason of the Agreement and/or this Addendum, Business Associate shall return or destroy all PHI, if feasible to do so, including all PHI in possession of Business Associate’s agents or subcontractors. To the extent return or destruction of the PHI is not feasible, Business Associate shall notify Covered Entity in writing of the reasons return or destruction is not feasible and, if Covered Entity agrees, may retain the PHI subject to this Section 4.2. Under any circumstances, Business Associate shall extend any and all protections, limitations and restrictions contained in this Addendum to Business Associate’s use and/or disclosure of any PHI retained after the expiration or termination of the Agreement and/or this Addendum, and shall limit any further uses and/or disclosures solely to the purposes that make return or destruction of the PHI infeasible.

4.3 Cooperation. Each Party shall cooperate in good faith in all respects with the other Party in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry.

5. MISCELLANEOUS

5.1 Contradictory Terms; Construction of Terms. Any other provision of the Agreement that is directly contradictory to one or more terms of this Addendum (“Contradictory Term”) shall be superseded by the terms of this Addendum to the extent and only to the extent of the contradiction, only for the purpose of Covered Entity’s compliance with HIPAA and ARRA, and only to the extent reasonably impossible to comply with both the Contradictory Term and the terms of this Addendum. The terms of this Addendum to the extent they are unclear shall be construed to allow for compliance by Covered Entity with HIPAA and ARRA.

5.2 Survival. Sections 4.2, 4.3, 5.1 and 5.2 and shall survive the expiration or termination for any reason of the Agreement and/or of this Addendum.