

# ATTACHMENT B – HIPAA BUSINESS ASSOCIATE AGREEMENT

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## HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (this “Agreement”) dated \_\_\_\_\_, 20\_\_ , is by and between the **Lancaster County Workforce Development Board** located at 1046 Manheim Pike, Lancaster PA 17601 (“Covered Entity”) and **Vendor Name** located at Vendor Address (“Business Associate”) related to the work to be performed as described below (Covered Entity and Business Associate, each a “Party” and collectively, the “Parties”).

### BACKGROUND

- I. Covered Entity has engaged Business Associate to provide \_\_\_\_\_ as further detailed in RFP # \_\_\_\_\_ (thereafter, the “BA Services Contract”), in providing certain functions and activities for and on behalf of Covered Entity (the “BA Services”).
- II. Covered Entity wishes to disclose information to Business Associate pursuant to the terms of this Agreement, some of which may constitute Protected Health Information (“PHI”), including electronic protected health information (“e-PHI”) (PHI and e-PHI are, collectively, referred to hereinafter as “Covered Entity’s PHI”) in order for Business Associate to perform the BA Services.
- III. Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate in connection with the BA Services Contract and pursuant to this Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“Original HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH”, and collectively with Original HIPAA, the “HIPAA Statute”), along with regulations promulgated by the Secretary of the Department of Health and Human Services (“HHS”) under the HIPAA Statute, including the “Privacy Rule” (45 CFR Parts 160 and 164, Subparts A and E) and the “Security Rule” (45 CFR Part 160 and 164, Subparts A and C), as amended by the “Omnibus Rule” (45 CFR Part 160, Subparts A, B, C and D and Part 164, Subparts A and C) (the Privacy Rule, the Security Rule and the Omnibus Rule, collectively the “HIPAA Rules”), as well as any other applicable laws concerning the privacy and security of health information. Hereinafter, the HIPAA Rules and the HIPAA Statute may be collectively referred to as “HIPAA”.
- IV. Under HIPAA, Covered Entity must document the required satisfactory assurances through a written agreement with Business Associate that meets the applicable requirements of HIPAA, as well as incorporate into such agreement those requirements under HITECH that relate to privacy or security and are applicable to Business Associate, and the Parties now wish to enter into the Agreement in order to comply with such requirement and to set forth more specifically each Party’s respective obligations in connection therewith.

In consideration of the mutual promises below and the exchange of information provided for herein, the Parties agree as follows:

### TERMS

- A. Incorporation of Background. The “Background” paragraphs set forth above are incorporated herein and made a part of the terms of this Agreement as if set forth herein in full.
- B. Effective Date. Except as specifically stated otherwise in this Agreement, the Effective Date shall be the date that first appears above in the introductory paragraph to this Agreement.

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- C. Definitions. Any capitalized terms not otherwise specifically defined in this Agreement shall have the meanings ascribed to them in HIPAA.
- D. Obligations of Covered Entity. Covered Entity shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of Covered Entity's PHI transmitted to Business Associate pursuant to this Agreement, in accordance with the standards and requirements of HIPAA, until such PHI is received by Business Associate.
- E. Obligations of Business Associate.
- 1) Permitted Uses and Disclosures. Business Associate may use and/or disclose any and all of Covered Entity's PHI received by Business Associate from Covered Entity, or created or obtained by Business Associate on behalf of Covered Entity as follows:
    - a) Purpose: Business Associate may use Covered Entity's PHI to provide or perform the BA Services, as set forth in the BA Services Contract, as permitted by and in accordance with this Agreement, HIPAA, and all other applicable federal or state laws. Business Associate may not use or disclose Covered Entity's PHI in a manner that would violate HIPAA if done by Covered Entity, this Agreement, or applicable law.
    - b) Type of Information: Business Associate may use and/or disclose only the minimum necessary amount of Covered Entity's PHI needed for Business Associate to perform the BA Services in a manner consistent with Covered Entity's minimum necessary policies and procedures and any minimum necessary standards and guidance released by HHS pursuant to HIPAA.
    - c) Scope of Use: Business Associate may use and further disclose Covered Entity's PHI to the extent permitted by and in accordance with this Agreement, HIPAA, or as otherwise required by law.
    - d) Use for Management and Administration: Business Associate may use Covered Entity's PHI for the proper management and administration of Business Associate, if such disclosure is necessary (1) for the proper management and administration of Business Associate or (2) to carry out the legal responsibilities of Business Associate.
    - e) Disclosure for Management and Administration: Business Associate may disclose Covered Entity's PHI for the proper management and administration of Business Associate if:
      1. the disclosure is required by law, or
      2. Business Associate obtains from such third party a written agreement:
        - (i) that Covered Entity's PHI will be held confidentially and in compliance with HIPAA, and used or further disclosed only as required by law or for the purpose for which it was disclosed to such third party; and

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- (ii) to notify Business Associate, without unreasonable delay, of any instances of which such third party becomes aware of a Breach that compromises the confidentiality of Covered Entity's PHI.

**In no event**, however, shall Business Associate disclose Covered Entity's PHI for the foregoing purposes to any such third party not within the borders and jurisdiction of the United States of America without the prior written consent of Covered Entity, which may be withheld in Covered Entity's sole and unfettered discretion.

- f) Uses or Disclosures Requiring Prior Authorization: Business Associate agrees and understands that, except as expressly provided in this Agreement, or permitted under HIPAA, and state law, it shall not use or disclose Covered Entity's PHI to any other person or entity without first having received a HIPAA-compliant authorization. Business Associate shall retain a copy of each authorization obtained, and the information provided in response to the authorization, for six (6) years.
  - g) Nondisclosure: Business Associate shall not use or further disclose Covered Entity's PHI other than as permitted or required by this Agreement, or as otherwise required or permitted by law.
  - h) Compliance with Privacy Rule and Security Rule: To the extent Business Associate is to carry out a function or obligation of Covered Entity with respect to the Privacy Rule or Security Rule, Business Associate shall comply with the requirements of such subparts that apply to the Covered Entity in the performance of such obligation.
- 2) Business Associate's Agents. Business Associate shall ensure that any agent to whom it provides Covered Entity's PHI agrees in writing to comply with all HIPAA requirements that apply to Business Associate and with the terms and the restrictions of this Agreement with respect to such PHI, and to ensure that any subcontractor of agent agrees to such additional terms and restrictions as may be necessary to allow Business Associate to meet its obligations under this Agreement including, but not limited to, the terms and conditions set forth in Paragraph E, Section 8, hereof. In connection therewith, Business Associate agrees to indemnify, defend and hold Covered Entity harmless from and against any and all penalties, claims, fines, losses, liabilities, costs and other expenses, including court costs and reasonable attorneys' fees and disbursements, incurred as a result of, or arising directly or indirectly out of or in connection with any claims, demands, awards, judgments, actions and proceedings made by any person or organization arising out of or in any way connected with the Business Associate's agent's documentation, disclosure, use, handling, control or maintenance of Covered Entity's PHI.
- 3) Prohibited Uses and Disclosures.
- a) Prohibition on "Sale" of PHI and "Marketing". Business Associate shall not directly or indirectly accept remuneration in exchange for using or disclosing any of Covered Entity's PHI, including in de-identified form, except Business Associate may accept such remuneration from Covered Entity in exchange for services or functions performed pursuant to this Agreement. Business Associate

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shall not use or disclose Covered Entity’s PHI for Marketing except for or on behalf of Covered Entity with Covered Entity’s express written consent and the individual’s Authorization.

- b) All Other Uses Strictly Prohibited. Business Associate is strictly prohibited from using or disclosing Covered Entity’s PHI in any other manner except as expressly permitted under this Agreement, including, but not limited to, manipulating or otherwise converting such information to de-identified format, even if any such use or disclosure is otherwise permitted under HIPAA, unless Covered Entity agrees in advance in writing.

4) Security Safeguards.

- a) General. Business Associate shall have in place reasonable and appropriate safeguards to provide for the security of Covered Entity’s PHI and prevent use or disclosure of Covered Entity’s PHI other than as provided for by this Agreement in accordance with the Security Rule and other applicable laws, including administrative, technical and physical safeguard standards as set forth in § 164.308, § 164.310, § 164.312 of the Security Rule:

1. Compliance with Security Rule. Business Associate shall comply with the requirements of the Security Rule at all times with respect to Covered Entity’s PHI.
2. Administrative and Other Safeguards. Business Associate shall implement and maintain a written security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of Business Associate’s operations and the nature and scope of its activities and as reasonably necessary for Business Associate to comply with applicable provisions of the Security Rule, including but not limited to all “Required” and “Addressable” Implementation Scope of work.
3. Documentation. Business Associate shall maintain written or electronic policies and procedures developed to comply with the Security Rule. If any action, activity or assessment is required under the Security Rule to be documented, Business Associate shall maintain a written (or electronic) record of the same, and retain a copy and make it available to Covered Entity upon request for a period of six (6) years from the date of its creation, or the date when it last was in effect, whichever is later.
4. HHS Guidance. Business Associate shall implement and comply with all requirements set forth in any guidance concerning business associate’s compliance with the Security Rule that may be issued by HHS pursuant to HIPAA.

b) Security Breach Notification.

1. General. Business Associate shall comply with the standards and requirements under the Breach Notification Laws, which for purposes of

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this Agreement include, collectively, the provisions relating to breach as set forth in HITECH and its related Rules for Breach Notification for Unsecured Protected Health Information (45 CFR Parts 160 and 164), as may be amended in the future, and in the Pennsylvania Breach of Personal Information Notification Act, and its related regulations, as may be amended from time to time.

2. Encryption. Business Associate shall encrypt Covered Entity’s PHI when maintained by Business Associate (i.e., “at rest”) and when transmitted by Business Associate (i.e., “in transit”) to render it unusable, unreadable and/or indecipherable, including any and all of Covered Entity’s PHI that Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, transmits or discloses for or on behalf of Covered Entity pursuant to this Agreement. If the Parties otherwise mutually agree that it is not reasonable or possible for Business Associate to encrypt Covered Entity’s PHI, then Business Associate shall implement reasonable alternative security methods, as agreed to by Covered Entity in its sole and unfettered discretion, to safeguard Covered Entity’s PHI.
3. Business Associate’s Obligations in the Event of a Security Incident or Breach.
  - (i) Reporting Security Incidents and Breaches. Business Associate shall promptly report to Covered Entity’s Privacy Officer and/or Security Officer, or their respective designee, either in person or by telephone at a number to be provided by Covered Entity, any Breach or Security Incident, as such terms are defined by HIPAA, that has or may result in the unauthorized use or disclosure of Covered Entity’s PHI, and in no case later than seventy-two (72) hours from the date of actual or constructive discovery by Business Associate.
  - (ii) Discovery of Breach. In accordance with 45 C.F.R. §164.402, any acquisition, access, use or disclosure of PHI in a manner not permitted under the Privacy Rule is presumed to be a Breach. For purposes of this Agreement, a Breach shall be deemed “discovered” by Business Associate as of the first day on which such Breach is actually known to any person, other than the individual committing the Breach, that is an employee, officer, or other agent of Business Associate, or if such Breach should reasonably have been known to Business Associate to have occurred, including but not limited to notification provided to Business Associate by a subcontractor of a Breach. Business Associate shall take all commercially reasonable steps (e.g., audits; hotlines; technological tools, etc.) to allow it to discover Breaches and Security Incidents involving Covered Entity’s PHI.
  - (iii) No Delay for Risk Assessment. Business Associate shall not delay Breach or Security Incident reporting to Covered Entity on the basis of there being a pending determination of whether the

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incident may result in a “low probability” that Covered Entity’s PHI was compromised under the Breach Notification Laws. Covered Entity has the sole and unfettered right to make any and all risk assessment determinations, and Business Associate shall cooperate with investigations if requested by Covered Entity in order for Covered Entity to comply with its obligations under HIPAA.

- (iv) Assistance and Cooperation. Business Associate shall provide Covered Entity with such information as may be required for Covered Entity to appropriately determine whether an incident is a Security Incident or Breach and provide such notification as may be required under the Breach Notification Laws. Business Associate agrees to assist and cooperate with Covered Entity as needed for Covered Entity and Business Associate to fully comply with the Breach Notification Laws. If Business Associate is the direct or indirect cause of a Breach of Covered Entity’s PHI, including any of Business Associate’s employees, owners, directors, managers, subcontractors, agents, independent contractors, or affiliates, Business Associate shall provide Covered Entity, at Business Associate’s sole cost, administrative support and other resources as may be requested by Covered Entity in order to furnish written notices to individuals affected by the Breach and otherwise comply with the Breach Notification Laws. In the event that Business Associate does not provide such requested assistance and resources in a timely manner, as determined by Covered Entity in its sole and unfettered discretion, then Business Associate shall reimburse Covered Entity for all reasonable and actual costs and expenses (e.g., postage; supplies; administrative staff time, etc.) incurred by Covered Entity in its efforts to comply with the Breach Notification Laws.
  - (v) Indemnification for Failures to Discover or Report Breaches. Business Associate shall defend, indemnify and hold harmless Covered Entity and each of its owners, officers, directors, managers, employees, agents and subcontractors (“Covered Entity Affiliates”) from and against any and all penalties, claims, fines, losses, liabilities, damages, costs and expenses (including reasonable attorneys’ fees and expenses) incurred by Covered Entity or any Covered Entity Affiliates arising out of or in connection with Business Associate’s negligent failure to (a) discover a Breach, (b) timely notify Covered Entity of a Breach that is known or should have been known to Business Associate or (c) otherwise comply with Business Associate’s obligations under the Breach Notification Laws and this Agreement.
- 5) Requested Restrictions. Business Associate acknowledges that Covered Entity is required under § 13405(a) of HITECH to comply with an individual’s requested restriction regarding his or her PHI (unless the disclosure is otherwise required by law) if:

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- a) the disclosure is to a health plan only for purposes of carrying out payment or health care operations (but not treatment); and
- b) Covered Entity's PHI pertains solely to a health care item or service for which Covered Entity has been paid out-of-pocket in full by the individual or the individual's representative.

Business Associate shall comply with any such requested restriction that applies to Business Associate's further use or disclosure of Covered Entity's PHI and of which Business Associate is made aware.

- 6) Availability of Information to Covered Entity. Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill Covered Entity's obligations to provide access to, provide a copy of, and account for disclosures with respect to Covered Entity's PHI pursuant to HIPAA, including, but not limited to, 45 CFR § 164.524, and making available PHI maintained in an electronic designated record set in an electronic form and format as requested by the individual if readily producible. Nothing in this provision shall be construed to preclude or limit Business Associate's obligations under the law, specifically with respect to the provision of access to individuals of their PHI and the provision of an accounting of disclosures to individuals of their PHI.
- 7) Amendment of PHI. Business Associate shall make Covered Entity's PHI available to Covered Entity as Covered Entity may require to fulfill Covered Entity's obligations to amend Covered Entity's PHI pursuant to HIPAA, including, but not limited to, 45 CFR §164.526, and Business Associate shall, as directed by Covered Entity, incorporate any amendments to Covered Entity's PHI into copies of such PHI maintained by Business Associate. Nothing in this provision shall be construed to preclude or limit Business Associate's obligations under the law, specifically with respect to the amendment of Covered Entity's PHI by Business Associate.
- 8) Business Associate's Subcontractors.
  - a) Subcontractor Agreement. Business Associate shall not transmit Covered Entity's PHI to any Subcontractor or prospective Subcontractor except as otherwise provided herein. In accordance with the Omnibus Rule, Business Associate shall enter into a written subcontractor agreement (the "Subcontractor Agreement") with any Subcontractor that creates, receives, maintains, or transmits Covered Entity's PHI on behalf of Business Associate. In the event that Business Associate knows of a pattern of activity or practice of a Subcontractor that constitutes a material breach or violation of the Subcontractor's obligation under the Subcontractor Agreement or other arrangements, Business Associate shall notify Covered Entity and take reasonable steps to cure such breach or end the violation, as applicable, to Covered Entity's satisfaction and, if such steps prove unsuccessful, terminate the Subcontractor Agreement or other arrangements, if feasible. A Subcontractor Agreement shall contain, among other things, the following:
    - 1. the agreement of Subcontractor to comply as to Covered Entity's PHI with the same restrictions and conditions that apply to Business Associate under this Agreement;

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2. Subcontractor shall, in accordance with HIPAA, use and disclose only the minimum amount of Covered Entity's PHI necessary for Subcontractor to perform its services under its agreement with Business Associate;
  3. Subcontractor shall abide by all Minimum Necessary standards when using and disclosing Covered Entity's PHI;
  4. if Subcontractor is an agent of Business Associate, Subcontractor shall not transmit Covered Entity's PHI to any third party or prospective Subcontractor without the prior review or approval by Business Associate of such third party or prospective Subcontractor and/or as otherwise provided in the Subcontractor Agreement;
  5. Subcontractor shall use or disclose Covered Entity's PHI only as permitted or required by the Subcontractor Agreement or as required by law;
  6. Subcontractor shall not use or disclose Covered Entity's PHI in a manner that would violate the requirements of HIPAA or the Omnibus Rule if done by Covered Entity; and
  7. Covered Entity shall be expressly included as a third-party beneficiary to the Subcontractor Agreement and shall be afforded, without limitation, all rights and benefits associated therewith.
- b) Foreign Entities. Business Associate shall not disclose any of Covered Entity's PHI to a subcontractor not within the borders and jurisdiction of the United States of America without prior written consent of Covered Entity which may be withheld in Covered Entity's sole and unfettered discretion.
- 9) Internal Practices. Business Associate shall make its internal practices, books and records relating to the use and disclosure of Covered Entity's PHI available to the HHS for purposes of determining Covered Entity's compliance with HIPAA.
- 10) Accounting of Disclosures. Business Associate shall maintain and make available documentation as required under § 164.528 of the Privacy Rule to allow Covered Entity to respond to an individual's request for an accounting of disclosures by Business Associate. Business Associate shall provide such information as may be necessary in order for Covered Entity to respond to an individual's request for an accounting of disclosures as required by 45 C.F.R. § 164.528, as modified by HIPAA and its implementing accounting of disclosure rules and regulations.
- F. State Law. Business Associate shall comply with any provision or requirement concerning privacy or security of information under Pennsylvania law that is more stringent than a similar provision or requirement under HIPAA or this Agreement.
- G. Red Flags Rule. With respect to Business Associate's access to, use or handling of information in connection with Covered Entity's "Covered Accounts" (as defined under the Federal Trade Commission's Red Flags Rule (the "Red Flags Rule") and identified by Covered Entity), Business Associate shall, as of the Effective Date of this Agreement:



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- 1) Implement reasonable administrative, physical and technical policies and procedures to detect, prevent and mitigate the risk of identity theft at Business Associate;
  - 2) Cooperate with and take such steps as are reasonably necessary to assist Covered Entity with compliance with its Identity Theft Prevention Program; and
  - 3) Promptly report to Covered Entity any specific Red Flags, as identified in Covered Entity's Red Flag policies, which Business Associate detects, and, as appropriate, respond to, or reasonably assist Covered Entity in responding to, such Red Flags in accordance with Covered Entity's policies and procedures.
- H. Audits, Inspection and Enforcement. Covered Entity may, upon reasonable notice, inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement. Business Associate shall promptly remedy any violation of any term of this Agreement and notify Covered Entity of the outcome.
- I. Termination.
- 1) Noncompliance. If either Party notifies (the "Notifying Party") the other Party regarding an activity or practice that constitutes a material breach or violation of such other Party's obligation under this Agreement, HIPAA or any other applicable laws concerning the privacy and security of health information (the "Breaching Party"), and such Breaching Party does not take reasonable steps to or otherwise does not successfully cure the breach or end the violation, as applicable, within a reasonable timeframe as agreed to by the Parties, the Notifying Party is permitted to the extent feasible, terminate this Agreement and the BA Services Contract. The foregoing is not intended to, and does not, limit any other remedy which may be available to the Notifying Party hereunder or as a matter of law.
  - 2) Judicial or Administrative Proceedings. Either Party may terminate this Agreement and the BA Services Contract, effective immediately, if:
    - a) the other Party is named as a defendant in a criminal proceeding for a violation of HIPAA; or
    - b) a finding or stipulation that the other Party has violated any standard or requirement of HIPAA or other security or privacy law is made in any administrative or civil proceeding in which the Party has been joined.
  - 3) Effect of Termination. Upon termination of the BA Services Contract for any reason, Business Associate shall return to Covered Entity and destroy all of Covered Entity's PHI that Business Associate still maintains in any form, and shall retain no copies of such PHI, or if return or destruction is not feasible, Business Associate agrees, at Covered Entity's reasonable expense, to continue to extend the protections of this Agreement to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.
- J. Indemnification. Business Associate shall indemnify, hold harmless and defend Covered Entity from and against any and all penalties, claims, fines, losses, liabilities, costs and other expenses,

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including court costs and reasonable attorneys' fees and disbursements, incurred as a result of, or arising directly or indirectly out of or in connection with:

- 1) any misrepresentation, breach of warranty or non-fulfillment of any undertaking by Business Associate under this Agreement; and
- 2) any claims, demands, awards, judgments, actions and proceedings made by any person or organization arising out of or in any way connected with Business Associate's performance under this Agreement.

K. Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement or HIPAA will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

L. Amendment. The Parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The Parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA and other applicable laws relating to the security or confidentiality of PHI. The Parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all PHI that it receives or creates pursuant to the delivery of the BA Services and this Agreement. Upon either Party's request, both Parties agree to promptly enter into negotiations concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA or other applicable laws. Either Party may terminate the BA Services upon thirty (30) days' written notice in the event:

- 1) the other Party does not promptly enter into negotiations to amend this Agreement when requested by a Party pursuant to this Section; or
- 2) the other Party does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI sufficient to satisfy the standards and requirements of HIPAA.

M. No Third-Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, the Covered Entity Affiliates and Business Associate and their respective heirs, representatives, successors and assigns, any rights, remedies, obligations or liabilities whatsoever, whether as creditor beneficiary, donor beneficiary or otherwise.

N. Independent Contractor. Nothing contained herein shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of employer and employee, principal and agent, partners, joint venturers or any similar relationship, between the Parties hereto. Covered Entity and Business Associate acknowledge and agree that Business Associate is an independent contractor and not an agent of Covered Entity, and Business Associate shall be solely liable for the payment of all income, unemployment, workers compensation, Social Security insurance or similar

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taxes or assessments on the fees or other remuneration paid or to be paid to Business Associate by Covered Entity.

O. Miscellaneous.

- 1) Entire Agreement. This Agreement supersedes all previous agreements between Covered Entity and Business Associate and contains the entire understanding and agreement between the Parties with respect to the subject matter hereof.
- 2) Headings. The headings in this Agreement are for convenience of reference only and shall not be used to interpret or construe its provisions.
- 3) Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the Commonwealth of Pennsylvania without regard to conflicts of laws principles.
- 4) Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, each Party hereto and their respective successors and assigns.
- 5) Mutual Negotiation. Each and every provision of this Agreement has been mutually negotiated, prepared and drafted and, in connection with the construction of any provisions hereof, no consideration shall be given to the issue of which Party actually prepared, drafted, requested or negotiated any provision of this Agreement, or its deletion.
- 6) Notices. All notices, demands and other communications to be made hereunder (“Notice”) shall be given in writing and shall be deemed to have been duly given if personally delivered or sent by confirmed facsimile transmission, recognized overnight courier service which provides a receipt against delivery, or certified or registered mail, postage prepaid, return receipt requested, to the other Party at the address set forth in the first paragraph of this Agreement. Notice shall be deemed effective, if personally delivered, when delivered; if sent by confirmed facsimile transmission, when sent; if sent via overnight delivery, on the first business day after being sent, and if mailed, at midnight on the third business day after deposit in the U.S. mail.
- 7) Modification. This Agreement may be amended, superseded, terminated or extended, and the terms hereof may be waived, only by a written instrument signed by all of the Parties or, in the case of a waiver, signed by the Party waiving compliance.
- 8) Preservation of Rights. No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party of any such right, power or privilege, nor any single or partial exercise of any right, power or privilege, preclude any further exercise thereof or the exercise of any other such right, power or privilege. The rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies that any Party may otherwise have at law, in equity or otherwise.
- 9) Provisions Severable. The provisions of this Agreement are independent of and severable from each other. No provisions will be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any one or more of any of the provisions hereof may be invalid or unenforceable in whole or in part.

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- 10) Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.
- 11) Interpretation. The Parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA.
- 12) Survival. Any provision of this Agreement that, by its nature, is intended to survive the termination or expiration of this Agreement and/or the BA Services Contract shall survive the termination or expiration of this Agreement and/or the BA Services Contract, including, but not limited to, Paragraph E, Sections (1)(f), (2), (4)(b)(3), (9), and (10), Paragraph I, Section (3), and Paragraph J.

**IN WITNESS WHEREOF**, and intending to be legally bound hereby, the Parties hereto have duly executed this Agreement on the day and year below written:

COVERED ENTITY:

BUSINESS ASSOCIATE:

**LANCASTER COUNTY WORKFORCE DEVELOPMENT BOARD**

**VENDOR NAME**

By: \_\_\_\_\_  
Print Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date: \_\_\_\_\_  
EIN: 23-2147355

By: \_\_\_\_\_  
Print Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date: \_\_\_\_\_  
EIN: \_\_\_\_\_

ATTEST:

ATTEST:

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

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

Name (printed): \_\_\_\_\_

Name (printed): \_\_\_\_\_

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

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