

2021 Alabama Medicaid Agreement

Participating facility Name:
Federal Medicare Provider #:
Corporation/Organization Name (If applicable):
Address:
Phone:
Administrators Name:
Administrators Email Address:
Survey Champion Name (if different than administrator):
Survey Champion Email Address:
Licensed Skilled Nursing Bed Count:
Total number of Long-Stay Residents with a of BIMS 8+:
OPTIONAL EMPLOYEE SURVEY: (check yes or no) <input type="checkbox"/> Yes / <input type="checkbox"/> No
Total Number of Employees if surveying (Full / Part time):

Annual Fees

NRC will invoice participating facilities annually based on the number of licensed beds according to the table below. Payment is due 30 days from receipt of the invoice. Employee Survey is optional.

Licensed Bed	Family/Resident Survey	Optional Employee Survey
0-50	\$750	\$750
51-75	\$800	\$750
76-100	\$850	\$750
101-125	\$900	\$750
126-150	\$950	\$750
151-175	\$1,000	\$750
176-200	\$1,050	\$750
200+	\$1,100	\$750

Scope of Work:

- Project will be open to all Alabama Nursing Facilities
- Annual Family/Resident Survey
 - All Long-Stay Residents with a BIMS of 8+
 - All Long-Stay Family Members regardless of the residents BIMS
- Optional Annual Employee Survey

Reporting:

- Individual facility reports will be provided to participating facilities
- Overall aggregate state report will be provided to the ANHA
- Overall aggregate regional reports will be provided to ANHA
- Scorecard report will be provided to Alabama Medicaid and will display the following:
 - Facility Name
 - Facility CoreQ Recommendation Score: TopBox (excellent) and Top3Box (excellent, very good, good)
 - Facility combined Family/Resident Response Rate

The Organization identified above, by execution of this Agreement through its authorized representative, grants NRC Health permission to release data obtained in responses to the Family/Resident Satisfaction Questionnaire administered on behalf of the Organization to Alabama Medicaid for use in connection with the Alabama Medicaid Nursing Home Survey Initiative.

The Organization identified above, by execution of this Agreement through its authorized representative, grants NRC Health permission to release data obtained in responses to the CoreQ Satisfaction Questionnaire administered on behalf of the Organization for use in connection with the American Health Care Association/National Center for Assisted Living LTC Trend Tracker.

National Research Corporation
d/b/a NRC Health
1245 Q Street
Lincoln, NE 68508

Member Name:
Street Address:
City, State, Zip:

Signature:	Signature:
Name:	Name:
Title:	Title:
Dated:	Dated:

The following terms and conditions attached to this Agreement as Exhibits "A" and "B", which are incorporated herein by this reference, are an integral part of this Agreement. The Parties hereby agree that execution of this Agreement or amendments thereto may be conducted by electronic means, including an Electronic Signature. Electronic Signature means any electronic symbol attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including the typed name of the sender.

If you have any questions, please contact Teresa Costello or Rich Kortum:

Teresa Costello
National Accounts Manager
1-800-388-4264
Tmcostello@nrchealth.com

Rich Kortum
Director Strategic Partnerships
1-800-388-4264
Rkortum@nrchealth.com

Exhibit A

The following provisions are an integral part of the Agreement between NRC Health and Member.

1. **CONFIDENTIAL INFORMATION.** Except as Member may authorize in writing, NRC Health and its employees shall: (a) Treat and cause to be treated as confidential, all information furnished by Member to NRC Health which has been marked as proprietary or confidential information of Member; (b) limit access to such confidential information to NRC Health employees and NRC Health supervisory and support personnel; (c) neither use nor copy any confidential information except with the approval of Member or to the extent necessary for performance of the Services hereunder; and (d) not disclose to any third party the identity of any patient of Member. Confidential Information shall not include: information that (i) is in the lawful possession of NRC Health without confidentiality restrictions prior to receipt under this Agreement; (ii) is or later becomes part of the public domain, except as the result of an unauthorized disclosure; (iii) is received from a third party having no obligations of confidentiality; (iv) is independently developed by NRC Health; or (v) is required by law or regulation to be disclosed. The parties recognize that information that may be exchanged between them may constitute Protected Health Information, as that term is defined under HIPAA. NRC Health and Member agree that NRC Health is a Business Associate of Member, as defined under HIPAA and its implementing regulations. NRC Health and Member agree to execute a Business Associate Agreement. To the extent applicable to this engagement, the Business Associate Agreement signed between NRC Health and Member is incorporated herein (the "BAA"). To the extent that the terms in this Agreement are in conflict with the terms of the BAA, the terms of the BAA shall be controlling.

2. **LIMITED WARRANTY; LIMITATION OF LIABILITY.**

(a) NRC Health warrants that the Services provided pursuant to this Agreement (the "Services"), will be performed in a good and workmanlike manner. NRC Health's sole obligation under this warranty is to correct and adjust the Services within a reasonable amount of time from notification by member that such Services do not substantially conform to this warranty.

(b) NRC HEALTH'S LIABILITY AND MEMBER'S EXCLUSIVE REMEDY FOR DEFECTIVE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT SHALL BE LIMITED TO CORRECTION AND ADJUSTMENT OF THE SERVICES WHICH DO NOT COMPLY WITH THIS WARRANTY, PROVIDED THAT MEMBER AFFORDS NRC HEALTH A REASONABLE OPPORTUNITY TO PROVIDE SUCH CORRECTIONS AND REASONABLY ASSISTS NRC HEALTH IN IDENTIFYING SUCH ERRORS OR OMISSIONS.

(c) THE LIMITED WARRANTY PROVIDED IN SUB-PARAGRAPHS (a) AND (b) HEREOF IS IN LIEU OF ALL OTHER EXPRESS WARRANTIES AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR COURSE OF DEALING OR USAGE OF TRADE, ALL SUCH WARRANTIES BEING EXPRESSLY DISCLAIMED BY NRC HEALTH.

(d) IN NO EVENT SHALL NRC HEALTH BE OBLIGATED OR LIABLE TO MEMBER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SERVICES PROVIDED BY NRC HEALTH TO MEMBER HEREUNDER, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE OR PROFIT, EVEN IF NRC HEALTH HAS BEEN ADVISED OR KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS.

3. **OWNERSHIP OF MATERIALS; LICENSE.** NRC Health owns all right, title, and interest in and to the Services; all related software, technology, printed materials, associated media, documentation, and systems; and all NRC Health content provided in connection with the Services, including all intellectual property rights relating to or embodied in the Services (collectively, "NRC Health Property"). NRC Health reserves all rights not expressly granted to Member in this Agreement. Member agrees not to reverse engineer, decompile, disassemble, translate, or attempt to learn the source code of any software related to NRC Health Property.

Subject to Member's compliance with the terms and conditions of this Agreement, NRC Health hereby grants Member a non-exclusive license during the term of this Agreement to use NRC Health Property for Member's own business purposes.

Member owns all right, title, and interest in and to any custom questions, responses, and other data and information provided by Member and its survey recipients to NRC Health (collectively "Data"). Except as provided elsewhere in this Agreement, all such Data shall be deemed Confidential Information of Member pursuant to Section 1 of these Terms and Conditions and shall not be utilized by NRC Health for any purpose other than to perform its obligations under this Agreement.

4. **TERMINATION.** This Agreement shall be effective upon the signing date of Member above ("Effective Date"), and shall remain in effect for one (1) year or until terminated by either party. Upon either party's failure to cure a material breach of this Agreement, the non-breaching party may terminate this Agreement upon thirty (30) days' prior written notice.

5. **ASSIGNMENT.** Member shall not assign its rights and obligations hereunder, in whole or in part, without the prior written consent of NRC Health. Any attempt to assign this Agreement without the appropriate written consent shall be immediately void and have no effect. Notwithstanding the above, this Agreement shall be binding upon and inure to the benefit of, the Parties hereto and their respective legal representatives, successors, and permitted assigns.

6. COUNTERPARTS AND ELECTRONIC SIGNATURES. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument, and shall become effective when counterparts have been signed by each of the parties; it being understood that all parties need not sign the same counterparts. The signatures of the authorized representatives of the parties to this Agreement which are scanned and sent by electronic mail or sent by facsimile transmission to the other party shall have the same force and effect as original signatures. Electronic Signatures of the parties transmitted by electronic mail shall be deemed to be their original signatures for all purposes.

7. MISCELLANEOUS.

(a) This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, representations and understandings of the parties with respect to the subject matter hereof. This Agreement may be supplemented, modified or amended only by a written instrument duly executed by authorized representatives of each of the parties, in accordance with the provisions of this Agreement.

(b) NRC Health shall maintain and provide evidence of general liability, property, automobile, and workers' compensation insurance coverages. Upon request, a current certificate of insurance shall be provided upon execution of the Agreement and as policies are renewed or changed.

(c) Until the expiration of four (4) years after the furnishing of the Services provided under this Agreement, NRC Health will make available to the Secretary, U.S. Department of Health and Human Services, and the U.S. Comptroller General, and their representatives, this Agreement, and all books, documents, and records necessary to certify the nature, extent and costs of the Services. If NRC Health carries out the duties of the Agreement through a subcontract worth \$10,000 or more over a 12-month period with a related organization, the subcontract will also contain an access clause to permit access by the Secretary, U.S. Department of Health and Human Services, and the U.S. Comptroller General, and their representatives to the related organization's books and records.

(d) NRC Health warrants that neither it, nor any of its subcontractors, employees, officers, or owners, has been or is debarred, excluded, or otherwise ineligible for Medicare or other federal program participation.

(e) This Agreement is not intended to create a joint venture, partnership or other association of any kind between the parties and the relationship of the parties under this Agreement is that of independent contractors. NRC Health agrees that the persons retained by it to provide Services hereunder are NRC Health employees and are not employees of Member for any purpose, and therefore, such persons are not entitled to any rights or benefits, whether present or future, under any retirement plan of Member; or the payment by Member of social security taxes, workers' compensation premiums, unemployment insurance premiums, overtime or other compensation, and any other employee benefits, including withholding of federal or state income taxes, and that NRC Health shall be solely responsible for these obligations.

(f) The waiver by one party of the performance of a covenant, condition or promise, or a failure to enforce a breach of any provision hereof under the Agreement shall not invalidate the Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, nor shall any such waiver be construed as future waiver of the performance of any other like act, covenant, condition or promise. No waiver shall be binding unless executed in writing by the Party making the waiver.

(g) In the event that any provision of the Agreement shall be invalid or prohibited under applicable law, such provision shall be ineffective only to the extent of such prohibition and the remaining provisions of the Agreement shall continue in effect.

(h) This Agreement shall be governed by and construed in accordance with the laws of the state in which Member's principal place of business is located, without giving effect to the principles of choice of law of such state; provided, however, that in the event that Member initiates litigation against NRC Health relating to the subject matter of this Agreement, the laws of the state of Nebraska shall govern, without giving effect to the principles of choice of law of such state.

(i) All notices of any kind required or permitted under this Agreement shall be in writing and shall be delivered by mailing a copy thereof by certified or registered United States mail, postage prepaid, with return receipt requested, or by overnight express delivery.

(j) If either Party is prevented from performing any portion of the Agreement (except obligations for the payment of money) by causes beyond its control, including without limitation, war, governmental regulations or controls, or acts of God, such Party shall be excused for a period of time equal to the duration of the conditions causing such delay.

(k) In connection with NRC Health's performance of the Services, NRC Health uses aggregated data to maintain a Member Measurement Data Warehouse (the "Data Warehouse"). In order to further NRC Health's research and provide member benchmarks, Member agrees to allow NRC Health to add Data to the Data Warehouse in a de-identified format and retain such de-identified Data following the termination of this Agreement. NRC Health will protect the confidentiality of member names in accordance with the terms of Section 1 of this Agreement. In no event will NRC Health divulge the identity of any patient in any report, publication or other form of communication containing Data generated in the course of performance of this Agreement. Further, to the extent that any such Data to be retained by NRC Health qualifies, at any time, as Protected Health

Information, NRC Health agrees to extend to such Data after termination of the Agreement the protections against disclosure required by the Health Insurance Portability and Accountability Act of 1996 including those amendments made by the Health Information Technology for Economic and Clinical Health Act.

(l) A paper copy of any questionnaires distributed in connection with NRC Health's performance of Services pursuant to an agreement involving paper-based Data collection will be stored for one (1) month following NRC Health's receipt of Data from such distribution. At the end of one month, the paper copies of the questionnaires will be destroyed. Electronic copies of questionnaires will be kept for a minimum of three (3) years following distribution before being destroyed or as otherwise provided for by the retention requirements set forth in the Business Associate Agreement.

EXHIBIT B

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is made and entered into by and between Member (“Covered Entity”) and National Research Corporation d/b/a NRC Health (“NRC Health”) (Covered Entity and NRC Health shall be referred to individually, as “Party” and , collectively, as “Parties”) to ensure that the Parties satisfy the requirements of the final regulations issued by the U.S. Department of Health and Human Services (“HHS”) pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Public Law 104 - 191, 110 Stat. 1936.

WHEREAS, Covered Entity and NRC Health have entered into an underlying services agreement under which NRC Health provides certain services to Covered Entity (the “Services Agreement”);

WHEREAS, the Parties acknowledge that Covered Entity is a “Covered Entity” and NRC Health is a “Business Associate” as those terms are defined under 45 CFR § 160.103 and as part of the Standards for Privacy of Individually Identifiable Health Information (“Privacy Rule”) and Security Standards for the Production of Electronic PHI (“Security Rule”), 45 CFR Parts 160 and 164, promulgated under HIPAA (“the Act”), including those amendments made by the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, Public Law 111- 5, 123 Stat. 226; and

WHEREAS, the purpose of this Agreement is to satisfy the requirements of the HIPAA Regulations, including, but not limited to the Business Associate Rule, 45 C.F.R. §164.504(e), as the same may be amended from time to time.

NOW, THEREFORE, the parties do hereby agree to the terms as set forth below.

1. Definitions

All terms used and capitalized in this Agreement, but not otherwise defined, shall have the same meaning as the respective terms in 45 C.F.R. §§ 160.103, 164.304, 164.402 and 164.501.

2. Obligations and Activities of NRC Health

- (a) NRC Health agrees to not use or further disclose PHI other than as Required by Law as that term is used in 45 CFR § 164.512, or as permitted or required by this Agreement.
- (b) NRC Health agrees to implement reasonable safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement and to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI (“ePHI”) that it creates, receives maintains or transmits on behalf of the Covered Entity and such safeguards shall include securing all ePHI by a technology or methodology approved by the Secretary that renders such PHI unusable, unreadable or indecipherable to unauthorized individuals unless the Covered Entity agrees otherwise.
- (c) NRC Health agrees to report to Covered Entity any Security Incident, acquisition, access, use or disclosure of Unsecured PHI not provided for by this Agreement within thirty (30) business days of the discovery of same. Notwithstanding this agreement, if NRC Health is notified by a law enforcement official that such reporting to Covered Entity would impede a criminal investigation or cause damage to national security, NRC Health shall delay notifying Covered Entity for the period specified by the law enforcement official.
- (d) NRC Health agrees to ensure that any agents, including a subcontractor, to whom it provides PHI received from, or created or received by NRC Health on behalf of Covered Entity, agrees to the same protections, restrictions and conditions that apply through this Agreement to NRC Health with respect to such information.
- (e) NRC Health agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by NRC Health on behalf of Covered Entity, available to the Secretary, for purposes of the Secretary determining Covered Entity’s compliance with HIPAA.
- (f) NRC Health agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528.
- (g) NRC Health agrees to provide to Covered Entity, within thirty (30) business days following a written request, information collected in accordance with section 2(f), to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528.
- (h) NRC Health agrees to provide Covered Entity the information necessary for Covered Entity to respond to an Individual’s request for access to or amendment of said Individual’s PHI within fifteen (15) business days of receipt of a written request for same from Covered Entity.
- (i) NRC Health agrees to ensure that any and all of NRC Health’s subcontractors or agents to whom NRC Health provides ePHI agree to implement reasonable and appropriate safeguards to protect such ePHI.
- (j) NRC Health agrees to abide by any restrictions on the use and disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522 about which Covered Entity has informed NRC Health in writing.
- (k) NRC Health agrees, to the extent practicable, when required by 45 CFR §164.502(b), to limit disclosures to the minimum necessary, and to disclose only a Limited Data Set.
- (l) NRC Health agrees to provide Covered Entity with written notice of a subpoena served on NRC Health in connection with PHI covered by this Agreement within five (5) business days of the receipt of such subpoena.

- (m) NRC Health agrees, to the extent practicable, to mitigate any known harmful effect of a use or disclosure of PHI by NRC Health in violation of this Agreement and take immediate steps to prevent any further violation.
- (n) NRC Health agrees that it shall report promptly to Covered Entity any Security Incident of which NRC Health becomes aware. Security Incident shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. This term shall not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by NRC Health. The term shall be limited to such incidents involving PHI or information systems containing electronic PHI.

3. Permitted Uses and Disclosures by NRC Health

- (a) Except as otherwise limited in this Agreement, NRC Health may use PHI to provide the services described in the Services Agreement to, or on behalf of, Covered Entity, and to undertake other activities of NRC Health permitted or required by this Agreement or as required by law.
- (b) Except as otherwise limited in this Agreement, NRC Health may disclose PHI for NRC Health's proper management and administration, provided that such disclosures are Required by Law, or NRC Health obtains reasonable assurances from the Person to whom the PHI is disclosed that such PHI will remain confidential and only used or further disclosed as Required by Law or for the purpose for which it was disclosed to such Person, and such Person notifies NRC Health of any instances of which it is aware in which the confidentiality of the PHI has been Breached.
- (c) NRC Health may retain data and information received from, created or received by NRC Health on behalf of Covered Entity and may aggregate such data and information with other data and information and use the same for research, analytic, and similar purposes provided that such data and information is extended the protections of this Agreement and the use by NRC Health is limited to the purposes specified herein.
- (d) NRC Health may use and disclose de-identified health information for any/all purposes specified herein, as well as for research purposes, conduct statistical analyses, and implementation of other studies as needed to comply with subsequent performance standards agreed upon by both Parties.
- (e) NRC Health may: i) perform data aggregation for the health care operations of Covered Entity, as permitted by 45 CFR § 164.504(e)(2)(i)(B); ii) as requested by Covered Entity or authorized governmental agent, use, analyze and disclose PHI in its possession for the public health activities and purposes set forth at 45 CFR § 164.512(b) and iii) de-identify PHI obtained by Covered Entity under the Agreement and use such de-identified data so long as such de-identification and usage is in accordance with the de-identification requirements set forth in 45 CFR 164.514(b).
- (f) For purposes of this Agreement; data aggregation services means the combining of Protected Health Information by Business Associate with the Protected Health Information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

4. Obligations of Covered Entity

- (a) Covered Entity shall notify NRC Health of any limitation(s) in Covered Entity's Notice of Privacy Practices as well as any changes to such Notice, in accordance with 45 C.F.R. §164.520, to the extent that such limitation(s) may affect NRC Health's use or disclosure of PHI.
- (b) Covered Entity shall notify NRC Health of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes affect NRC Health's use or disclosure of PHI.
- (c) Covered Entity shall notify NRC Health of any restriction(s) concerning the use or disclosure of PHI that Covered Entity has agreed to as well as requests for Confidential Communication by alternative means and at alternative locations, all in accordance with 45 C.F.R. §164.522.
- (d) Covered Entity agrees that it shall not request NRC Health to use or disclose PHI in any manner that would not be permissible under HIPAA if Covered Entity so used or disclosed PHI.
- (e) Covered Entity shall provide NRC Health with any amendments to PHI that Covered Entity has agreed to pursuant to 45 CFR §164.526.
- (f) Except as expressly provided herein or in a writing duly signed by authorized representatives of the Parties, NRC Health shall not assume any obligations of Covered Entity under the Privacy Rule.

5. Term and Termination

- (a) The Term of this Agreement shall be effective as of the Effective Date, and shall terminate on the later of the conclusion of NRC Health's provision of services to Covered Entity under the Services Agreement or when all of the PHI provided by Covered Entity to NRC Health, or created or received by NRC Health on behalf of Covered Entity, is destroyed or returned to Covered Entity. If it is not feasible to return or destroy the PHI, protections shall be extended to such PHI, in accordance with HIPAA and the provisions in this Section, and NRC Health will not use or disclose PHI retained for any purpose(s) other than those which applied prior to termination.
- (b) As provided under 45 CFR §§ 164.504(e)(1)(ii) and 164.504(e)(2)(iii), either Party may immediately terminate this Agreement and the services being provided if such Party determines that the other Party has breached a material term of this Agreement. Alternatively, and in the sole discretion of the non-breaching Party, such Party may choose to provide the breaching Party with written notice of the breach and provide the breaching Party thirty (30) days to cure the breach. Failure to cure the breach within the thirty (30) day period shall be grounds for immediate termination of this Agreement and the services being provided.

- (c) (1) Except as provided in sub-paragraphs (2) and (3) below, upon termination of this Agreement for any reason, NRC Health shall return or destroy all PHI received from Covered Entity or created or received by NRC Health on behalf of Covered Entity. This provision shall also apply to PHI that is in the possession of subcontractors or agents of NRC Health.
- (2) In the event that NRC Health determines that returning or destroying the PHI is not feasible, NRC Health shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI for so long as NRC Health maintains such PHI. If it is not feasible for an agent or subcontractor of NRC Health to return any PHI to NRC Health for destruction, NRC Health shall require the agent or subcontractor to extend any and all protections contained in this Agreement to such agent's or subcontractor's use and/or disclosure of any PHI retained after the termination of this Agreement.
- (3) In order for NRC Health to comply with the requirements of Consumer Assessment of Healthcare Providers and Systems (CAHPS), V. 6.0 relating to record retention by a survey vendor, NRC Health shall retain and store Covered Entity's CAHPS-related data files, including PHI for a minimum of three years.

6. Miscellaneous

- (a) A reference in this Agreement to a section in HIPAA means the section as in effect or as amended, and for which compliance is required.
- (b) This Agreement may not be modified or amended except in writing as agreed by both Parties; with the exception that the Parties agree that this Agreement shall automatically be deemed to be amended to incorporate any/all Amendment(s) to HIPAA and applicable regulations.
- (c) The respective rights and obligations of NRC Health under Section 2 of this Agreement shall survive the termination of this Agreement.
- (d) Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA.
- (e) This Agreement shall be construed and administered and its validity and enforceability determined under HIPAA. In the event HIPAA does not preempt state law in a particular circumstance, the laws of the state of Nebraska shall apply.
- (f) Covered Entity and NRC Health acknowledge and affirm that this Agreement is not intended to cover all aspects of the relationship between Covered Entity and NRC Health or of the services rendered and to be rendered to Covered Entity by NRC Health. This Agreement covers only the matters specifically addressed herein. Further, this Agreement supersedes any prior business associate agreement between Covered Entity and NRC Health and shall apply to all PHI existing as of the effective date of this Agreement or created or received by NRC Health thereafter. In the event of a conflict with any term of the Underlying Agreement, the terms of this Agreement shall govern.
- (g) If any part or provision of this Agreement is determined by a court of competent jurisdiction or by any administrative tribunal to be invalid, illegal or unenforceable, then the court or tribunal shall interpret the remaining portions of this Agreement to be enforceable to the fullest extent of the law.
- (h) NRC Health and Covered Entity do not intend to confer upon any person other than NRC Health and Covered Entity, and their respective successors or assigns, any rights remedies or obligations or liabilities whatsoever. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, assigns and successors in interest. Both Parties shall have the right to assign this Agreement upon the written agreement of the other Party, and all the provisions hereunder shall inure to the benefit of and be enforceable by any such assignee.
- (i) NRC Health and Covered Entity are and shall remain independent contractors throughout the term of this Agreement.
- (j) Any indemnification relating to violations of this Agreement shall be addressed, to the extent applicable, in the underlying services agreement between the Parties.
- (k) In no event shall NRC Health be liable to Covered Entity, its employees, agents or subcontractors for any consequential, incidental, indirect, special or punitive damages arising out of or in connection with NRC Health's performance or failure to perform under this Agreement, including but not limited to loss of revenue or profit.

7. HITECH Act Compliance

The Parties will comply with the requirements of the HITECH Act, which are applicable to business associates, and will comply with all regulations issued by HHS to implement these referenced statutes, as of the date by which business associates are required to comply, including but not limited to the following:

- (a) Requests for restrictions on use or disclosure to health plans for payment or health care purposes when the provider has been paid out of pocket and consistent with §13405(a);
- (b) The prohibition on receiving remuneration for certain communications that fall within the exceptions to the definition of marketing under 45 C.F.R. §164.501 unless permitted by this Agreement and §13406 of the HITECH Act;
- (c) The requirement relating to the provisions of access to certain information in electronic format under §13405(e); and
- (d) Compliance with each of the Standards and Implementation Specifications of 45 C.F.R. §§ 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards) and 164.316 (Policies and Procedures and Documentation Requirements).