ADMINISTRATIVE SERVICES AGREEMENT
With Stop-Loss Coverage
(Hybrid Plans)

This Administrative Services Agreement (this "***Agreement***") is entered into effective as of _____, 20____ (the "***Effective Date***"), by and between Memorial Hermann Health Solutions, Inc., a Texas corporation ("***MHHSI***"), and _____, a Texas _____ ("***Plan Sponsor***"), and is for the provision of certain administrative services for the self-funded employee health and welfare benefit plan(s), as defined by ERISA Section 3(1), sponsored by Plan Sponsor (individually or collectively, the "***Plan***"). MHHSI and Plan Sponsor are sometimes referred to in this Agreement, individually, as a "***Party***" or, together, as the "***Parties***."

RECITALS

A. MHHSI is licensed as a third party administrator by the Texas Department of Insurance; and

B. Plan Sponsor desires to engage MHHSI to provide certain administrative services for the Plan.

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

1.1 **"*Benefits*"** means reimbursement or payment (fee-for-service or capitation) by Plan Sponsor as required under the Plan for certain health care services and supplies provided to Covered Persons.

1.2 "***Claims Account(s)***" means one or more accounts established by Plan Sponsor to which MHHSI is made a limited agent for purposes of withdrawing funds for the payment of Complete Claims and other amounts payable under this Agreement.

1.3 "***COBRA***" has the meaning given it in Section 3 (entitled "*Fiduciary Responsibility*").

1.4 "***Complete Claim***" means a Benefits claim for which MHHSI has been provided with all information necessary to process the claim.

1.5 "***Confidential Information***" has the meaning given it in Section 14.2.1 (entitled "*Confidential Information Defined*").

1.6 **"*Covered Persons*"** means those employees of Plan Sponsor, and their dependents as described in the Plan, who are covered under the terms of the Plan.

1.7 "***Disclosing Party***" has the meaning given it in Section 14.2 (entitled "*Confidentiality*").

1.8 "***ERISA***" means the Employee Retirement Income Security Act of 1974, as amended.

1.9 "**Force Majeure**" has the meaning given it in Section 15.7 (entitled "*Force Majeure*").

1.10 "***HIPAA***" has the meaning given it in Section 3 (entitled "*Fiduciary Responsibility*").

1.11 ***"Hybrid Plan"*** means a Plan, as defined in this Agreement, that is combined with Stop-Loss Coverage.

1.12 "***Initial Term***" has the meaning given it in the first paragraph above.

1.13 "***Plan***" means the self-funded employee welfare benefit plan(s) within the meaning of ERISA sponsored by Plan Sponsor for its eligible employees and their dependents for which claims are administered under this Agreement; as such Plan may be amended from time to time by Plan Sponsor.

1.14 **"*Plan Document*"** means the written description of the Plan that MHHSI prepares on behalf of Plan Sponsor consistent with the terms of this Agreement.

1.15 **"*Plan Sponsor***" or "***Plan Administrator.***" Unless the context requires otherwise, the term "***Plan Sponsor***" or "***Plan Administrator***" as used in this Agreement shall include any corporation, partnership, committee, trustees of a trust, or other entity or individual sponsoring or administering the Plan at the time of execution of this Agreement and shall also include such additional or successor individuals or entities serving from time to time during the Term of this Agreement. If the Plan Administrator is not the same person or entity as Plan Sponsor, then (i) when this Agreement calls for MHHSI to provide information to Plan Sponsor, MHHSI will be in compliance with this Agreement if it provides that information to either Plan Sponsor or Plan Administrator, and (ii) when this Agreement calls for information or notice to be given to MHHSI by Plan Sponsor, MHHSI shall be absolutely protected in relying upon any information or notice given it by either Plan Sponsor or Plan Administrator. Where this Agreement calls for action or forbearance by Plan Sponsor, Plan Sponsor will ensure Plan Administrator's actions or inactions are consistent. MHHSI is not the Plan Administrator.

1.16 ***"Plan Year"*** means each twelve-month period during which the Plan Sponsor offers the Plan.

1.17 ***"Premium"*** means the monthly amount collected by MHHSI for (a) the Benefits payment; (b) the Services fees; (c) broker payments/commissions; and (d) the

Stop-Loss Coverage premium.

1.18 "***Receiving Party***" has the meaning given it in Section 14.2 (entitled "*Confidentiality*").

1.19 "***Renewal Term***" has the meaning given it in Section 4.1 (entitled "*Term of Agreement*").

1.20 ***"Stop-Loss Coverage"*** means the policy(ies) of insurance that protects Plan Sponsors against large claims. Stop-loss policies take effect after a certain threshold has been exceeded in Benefits payments.

1.21 ***"Stop-Loss Threshold"*** means the maximum amount of Benefits the Plan Sponsor must cover under the self-funded employee welfare benefit Plan before the Stop-Loss Coverage begins to cover the costs for such Benefits. The Stop- Loss Threshold equals 65% of the annual Premium or $5,000, whichever is greater, for the Plan Year.

1.22 "***Term***" means the Initial Term together with each Renewal Term.

1.23 "***Working Day***" means any one day Monday through Friday, excluding holidays observed by MHHSI and any other days when MHHSI is not open for business due to acts of God or other unanticipated events or emergencies.

2. SERVICES TO BE PERFORMED

MHHSI shall perform the administrative services described in **Exhibit A**. MHHSI is engaged to perform the services under this Agreement as an independent contractor and not as the Plan Administrator, Plan trustee or other named fiduciary. MHHSI shall not be designated or deemed to be an "*administrator*" or a "*fiduciary*" of the Plan as those terms are defined under ERISA Section 3(16)(A), ERISA Section 3(21)(A), or any other applicable Federal or State law.

Accordingly, MHHSI's services under this Agreement shall not include the power to make any decisions as to Plan policy, interpretations, practices or procedures, and shall be limited to the performance of only those ministerial functions such as the types described in Department of Labor Regulation Section 2509.75-8, D-2 (relating to claims processing, calculation of benefits, report preparation, employee communications, recommendations regarding Plan administration, etc.) within a framework of policies, interpretations, rules, practices, and procedures made by Plan Sponsor. MHHSI shall not render any investment advice with respect to the Plan's assets or have any authority or responsibility to do so. Unlike under a traditional self-funded plan, with respect to the Hybrid Plan that Plan Sponsor shall offer its employees and their dependents in connection with this Agreement, Plan Sponsor delegates to MHHSI the responsibility for determining the Benefits, premium rates, reimbursement procedures and claim payment procedures applicable to the Plan and for securing Stop-Loss Coverage, if any. In this respect, MHHSI serves as the claims fiduciary, which means that MHHSI shall make the final determination regarding payment of a claim for health care services prior to the Stop-Loss Coverage becoming effective. Plan Sponsor shall at all times retain ultimate control over

interpretation of the Plan and over the assets and operation of the Plan and shall retain final responsibility for the obligations of the Plan imposed by law.

The services provided under this Agreement represent applications of the Plan Document concerning medical necessity, appropriateness and other matters each of which the Plan Sponsor and/or Plan Administrator has delegated to MHHSI. MHHSI's services under this Agreement do not include any guarantee or certification that an individual is eligible or a service is covered under the Plan. MHHSI shall have the right to rely upon the recommendations of one or more physicians licensed to practice medicine that MHHSI may retain in the capacity of physician reviewer in connection with providing services under this Agreement. MHHSI shall not be responsible for the results of health care services or for the rendering of such services in accordance with appropriate medical standards or procedures. Decisions or determinations to obtain or deliver any health care service shall always be made only by the patient or his or her physician or hospital.

3. FIDUCIARY RESPONSIBILITY

Plan Sponsor acknowledges that it is the named fiduciary with respect to the Plan. Plan Sponsor understands and agrees that it and the Plan Administrator have delegated to MHHSI the authority to determine the Plan design but that Plan Sponsor and the Plan Administrator shall maintain discretion to accept such Plan design and shall maintain full responsibility for continued compliance with all provisions of applicable federal, state, and local laws, including, but not limited to: ERISA; the Internal Revenue Code of 1986, as amended; the Consolidated Omnibus Reconciliation Act of 1985, as amended ("***COBRA***"); the Family and Medical Leave Act of 1993, as amended; the Health Insurance Portability and Accountability Act of 1996, as may be amended ("***HIPAA***"); the Mental Health Parity Act of 1996, as may be amended; the Newborns' and Mothers' Health Protection Act of 1996, as may be amended; the Women's Health and Cancer Rights Act of 1998, as may be amended; the Deficit Reduction Act of 1984, as amended; and the Tax Equity and Fiscal Responsibility Act of 1982, as amended. Plan Sponsor acknowledges that Plan compliance shall include, but not be limited to, the following: preparation and filing of Forms 5500 [or 990 for 501(c) tax-exempt funds] and all related schedules; preparation or review of all ERISA required plan documentation; advising Covered Persons of their rights under any federal, state or local law, and the preparation and distribution of any notices, except for certificates of creditable coverage, required to be distributed under such laws; and preparation, distribution and filing of all reports related to the Plan required under any federal, state or local law, including but not limited to with the Internal Revenue Service and with the U.S. Department of Labor.

4. TERM AND TERMINATION

4.1 Term of Agreement. This Agreement shall remain in force and effect during the Initial Term and shall be automatically renewed for successive terms of one year (each a "***Renewal Term***") unless earlier terminated as set forth below.

4.2 Termination.

4.2.1 The Parties may terminate this Agreement as follows:

(a) By MHHSI for Non-Payment of Premium. Upon thirty (30) days prior written notice as provided in the monthly premium notice sent to Plan Sponsor, MHHSI may terminate this Agreement. If Plan Sponsor does not pay its monthly Premium in full within 30 days from the due date on the first (1st) day of the month, this Agreement shall automatically terminate, as of the last day for which Premium was paid, without the need for further notice. If the Agreement is terminated for non-payment of Premium, MHHSI shall only provide a one hundred and eighty (180) day claims run-out period.

(b) By MHHSI for Failure to Maintain Small Group Size. Upon thirty (30) days prior written notice to Plan Sponsor if the Employer has fewer than two (2) full-time employees for more than three (3) consecutive months.

(c) Early Termination by Plan Sponsor. Plan Sponsor must provide MHHSI at least thirty (30) days' prior written notice of its intent to terminate this Agreement as of the end of a calendar month. In the case of an early termination, Plan Sponsor shall owe an early termination fee equal to the lesser of (1) six (6) months Premium based on the Covered Person census on the date the termination notice is received by MHHSI or (2) the balance of the Premium owed under this Agreement for the Plan Year. Plan Sponsor shall pay the early termination fee to MHHSI within thirty (30) calendar days of the termination effective date. If Plan Sponsor pays such early termination fee within the 30-day deadline, MHHSI shall provide Plan Sponsor with a claims run-out period of 24 months from the date of termination. If Plan Sponsor pays the early termination fee after the 30-day deadline or fails to pay the fee in full, MHHSI shall provide Plan Sponsor with a claims run-out period of one hundred and eighty (180) days from the termination effective date.

(d) Upon written notice to the other Party if either Party becomes insolvent, is adjudicated as bankrupt, its business comes into possession or control, even temporarily, of any trustee in bankruptcy, has a receiver appointed for it, or makes a general assignment for the benefit of creditors; or

(e) At the end of any Plan Year upon thirty (30) days' notice by either Party of the Party's intent not to renew this Agreement.

4.2.2 Additionally, if Plan Sponsor does not agree to a fee adjustment made by MHHSI in accordance with Section 6.2, then Plan Sponsor may terminate this Agreement by providing written notice to MHHSI within thirty (30) days of the fee adjustment notice. Such termination will be effective thirty

(30) days after the termination notice.

4.3 Effect of Termination. Upon the effective date of the termination of this Agreement for any reason:

4.3.1 Plan Sponsor will pay to MHHSI all monies due to MHHSI under this Agreement within thirty (30) days after the effective date of the termination;

4.3.2 Plan Sponsor will immediately (i) cease to represent that MHHSI is a third party service provider for the Plan, (ii) cease to use MHHSI documents, employee communications materials, systems, logo-types, service marks, trademarks, trade names, methods and techniques in any form, and (iii) advise Covered Persons of the termination of this Agreement.

4.3.3 In addition to the foregoing, Plan Sponsor agrees that MHHSI is the sole owner of the following materials and that Plan Sponsor has no right to their use following termination of this Agreement, it being agreed that such materials were not prepared at the expense of Plan Sponsor:

(a) claim processing and payment manuals;
(b) administrative procedure manuals;
(c) data processing system designs;
(d) rating and underwriting programs, software and manuals;
(e) software and equipment; and
(f) standard forms provided by MHHSI, including any claims forms, enrollment forms, and notifications.

4.3.4 MHHSI shall deliver the Plan's records to Plan Sponsor as provided for in Section 13.2 (entitled "*Upon Termination*"). Except for the transfer of the records, MHHSI shall have no further obligation to perform any services under the Agreement. If, however, upon request by Plan Sponsor, MHHSI agrees to continue processing claims or to perform other services for or with respect to the Plan after the effective date of termination, Plan Sponsor shall pay MHHSI the fees for such post-termination services as set forth in **Exhibit B**, or if not set forth in **Exhibit B** then as agreed to by the Parties.

4.3.5 MHHSI shall reasonably cooperate, at Plan Sponsor's cost and expense, with the transition of administrative services performed under this Agreement to Plan Sponsor or its designee.

5. PLAN BENEFIT PAYMENTS AND CLAIMS ACCOUNT

Plan Sponsor shall authorize MHHSI to issue payments from the Claims Accounts for each of the following: (i) Benefits payments; (ii) administrative fees payable by Plan Sponsor to health care providers and other managed care organizations contracted by Plan Sponsor, directly or through MHHSI, to provide services in connection with the Benefits; (iii) premiums payable by

Plan Sponsor to its insurance carriers, in connection with the Plan, including for Stop-Loss Coverage; (iv) fees and expenses payable under this Agreement; and (v) any other fees or payments as authorized or directed by Plan Sponsor in writing. In accordance with the terms of the Plan Document and this Agreement, MHHSI will process and pay each Complete Claim in accordance with **Exhibit A**. Except as modified in the paragraph below, Plan Sponsor shall provide sufficient funds in the Claims Account to cover all payments identified in this Section and to satisfy any requirements under applicable provider agreement, law or regulation, and MHHSI shall not be liable for and shall have no obligation to advance or use its own funds for any such payments. MHHSI will not be considered the insurer, guarantor or underwriter of the liability of Plan Sponsor to provide Benefits for Covered Persons under the Plan. MHHSI will withdraw from the Claims Account only for the purposes specifically set forth in this Agreement. Unless this Agreement is terminated for non-payment of Premium pursuant to Section 4.2.1(a) above or unless the late payment circumstances of Section 4.2.1(c) apply, MHHSI shall under normal circumstances continue to pay run-out claims for Benefits received during the Term of the Agreement for up to 24 months.

Once the Benefits amount paid from the Claims Account meets or exceeds the Stop-Loss Threshold, the Stop-Loss Coverage will begin to cover subsequent costs for such Benefits for the remainder of the Plan Year. See **Exhibit D** to this Agreement.

6. FEES

6.1 The fee and expense structure is set forth in **Exhibit B**. Unless otherwise provided in **Exhibit B**, Plan Sponsor shall make payment of the fees to MHHSI on or before the first (1st) day of each month. Plan Sponsor shall have a thirty (30) day grace period past the first (1st) day of the month before MHHSI shall terminate this Agreement for non-payment of Premium.

6.2 MHHSI will have the right to change any fees or other charges under this Agreement up to one time during each Renewal Term by giving thirty (30) days prior written notice to Plan Sponsor unless Plan Sponsor agrees to a shorter notice period. In addition to the foregoing, MHHSI shall have the right to adjust the fees or other charges if (i) the Plan is amended to modify Benefits in a manner that affects MHHSI's administrative duties, (ii) there is a material variation, of at least 20%, in participant enrollment, or (iii) MHHSI's cost of operation is increased solely by virtue of increased postal charges; provided MHHSI gives Plan Sponsor at least thirty (30) days prior written notice of such adjustment. MHHSI will also have the right to adjust fees pursuant to any other provision of this Agreement which specifically allows adjustments, if any. Any other changes affecting fees hereunder may be made at any time as mutually agreed by the Parties. If Plan Sponsor objects to any fee adjustment made by MHHSI, then Plan Sponsor may terminate this Agreement in accordance with Section 4.2.2.

7. PLAN CHANGES

Plan Sponsor will file with MHHSI all amendments, modifications or other changes to the Plan at least ninety (90) Working Days prior to the proposed effective date of such amendment, modification or other change; provided that if such change is the result of statute or regulation

change or made as the result of action by a regulatory agency, Plan Sponsor shall give as much prior notice to MHHSI as is reasonably possible. MHHSI shall not be required to implement any such amendment, modification or other change without its advance written agreement as to the effective date and the amount of any additional fee required to cover MHHSI implementation costs. Additionally, MHHSI retains the right to modify the schedule of administrative charges to reflect any additional services required by such amendment, modification or other change. Should Plan Sponsor wish for MHHSI to produce Plan Documents after the initial implementation, MHHSI shall assess additional charges for such documents.

8. PLAN SPONSOR'S OBLIGATIONS

In addition to any other obligations set forth in this Agreement or under applicable law, to enable MHHSI to perform its obligations under this Agreement, Plan Sponsor shall at no charge to MHHSI:

8.1 Supply MHHSI with a list of all Covered Persons and all information required with respect to Covered Persons at least thirty (30) days prior to the Effective Date or as agreed upon by both Parties;

8.2 Provide MHHSI with information regarding Covered Persons' eligibility and entitlement to receive Benefits in MHHSI's required format;

8.3 Advise MHHSI promptly of any changes in Plan Sponsor's organization which might affect the status of the Plan, eligibility to participate in the Plan, or coverage under the Plan as in effect immediately prior to the effective date of such change;

8.4 Provide MHHSI with such additional information with respect to matters incidental to MHHSI's provision of services under this Agreement as may be requested by MHHSI from time-to-time;

8.5 Make available, as reasonably requested by MHHSI, timely management decisions and complete and accurate documentation and information (including, without limitations, documentation and information regarding Covered Persons) so that the services contemplated by this Agreement may be accomplished. This duty includes providing valid information needed to provide timely certificates of creditable coverage to Covered Person and former Covered Persons;

8.6 Maintain and file all licenses, permits, reports and disclosures and maintain the Plan in compliance with and as required by applicable federal, state, and local statutes and regulations;

8.7 Maintain a Claims Account in accordance with Section 5 (entitled "*Plan Benefit Payments and Claims Account*");

8.8 File with MHHSI all amendments, modifications, or other changes to the Plan in accordance with Section 7 (entitled "*Plan Changes*"); and

8.9 Perform any other administrative functions not expressly assumed by MHHSI under this Agreement.

9. PLAN COSTS; TAXES

9.1 MHHSI shall, at its own cost and expense, maintain and operate the facilities and personnel necessary to provide its services under this Agreement. MHHSI services shall not include the provision of legal services, actuarial services, or the services of independent certified public accountants. MHHSI may suggest the use of such professional advisors, but shall have no liability for the quality or cost of any services so provided. Plan Sponsor shall be responsible for all other costs and expenses of the Plan establishment and administration including legal, accounting, and other professional fees.

9.2 Plan Sponsor shall also be responsible for the payment or reimbursement to MHHSI of any federal Patient Centered Outcomes Research Institute ("PCORI") assessments, any federal risk adjustment obligations or any other amount due to or charged by a governmental body by way of assessment, allocation, adjustment, imposition, liability or other obligations of any sort whatsoever.

10. LIMITATION OF LIABILITY

MHHSI shall have no responsibility, risk, or liability for funding the Plan, or for the failure of Plan Sponsor to obtain or continue insurance coverage, except for the responsibility MHHSI assumes under this Agreement to assist Plan Sponsor in the procurement of, and to forward premium payments for, group health Stop-loss Coverage. Benefits under the Plan shall be provided solely by Plan Sponsor for those persons named in the Plan. MHHSI shall use good faith efforts to render the agreed-upon services in a timely and accurate manner, but shall not be liable for any damages resulting (i) from occasional errors or delays (within the range accepted in the health and welfare benefits administration industry) in the provision of its services; (ii) from its good faith application of the Plan Document provisions, including provisions concerning eligibility, coverage, medical necessity, or Benefits; or (iii) from a Covered Person obtaining or failing to obtain any particular health care as a result of MHHSI services. MHHSI will use ordinary care and diligence in the performance of its duties under this Agreement. MHHSI shall not be liable for the quality, nature, or results of health care whether or not provided through any health maintenance or preferred provider organizations sponsored, arranged, or recommended by MHHSI. MHHSI may rely upon, and has no obligation to investigate, the accuracy or completeness of information provided by Plan Sponsor, including information relating to MHHSI's performance of services and information provided in the Plan Document. MHHSI shall incur no liability resulting from MHHSI's reliance on such information. MHHSI shall not be liable to Plan Sponsor, Plan Administrator, or any Plan Covered Person or assignee of Benefits under the Plan with respect to the advice and opinions provided by Plan Sponsor. MHHSI shall have no liability for Plan Sponsor's breach of this Agreement, or for Plan Sponsor's or Plan Administrator's breach of its fiduciary duty.

11. LEGAL ACTION

Plan Sponsor, at Plan Sponsor's cost and expense, shall provide for the defense of itself against

all claims or suits brought by third parties and arising out of the Plan or the administration of the Plan. Plan Sponsor shall defend and indemnify MHHSI, at Plan Sponsor's cost, from and against all claims, suits, causes of action, liabilities, losses, damages, costs and expenses (including reasonable attorney fees) in which the alleged act or failure to act is a matter described in Section 10 for which MHHSI is to have no liability. Plan Sponsor and MHHSI each agree to promptly notify the other upon receiving notice or knowledge that a claim or suit has been filed against either of them arising out of or relating to the Plan. MHHSI reserves the right at any time to defend itself at its own expense. Plan Sponsor will not agree on behalf of MHHSI to any settlement that admits guilt of MHHSI or requires anything of MHHSI other than payment of money which is indemnified and fully payable by Plan Sponsor pursuant to this Section. Plan Sponsor is responsible for maintaining ERISA fiduciary, D&O, and general liability coverage at its expense.

12. ENFORCEMENT

12.1 Benefit Payments. In the event that a payment of Benefits is made in excess of the amount properly payable under the Plan, a payment of Benefits is made to or for an individual who is not eligible, or a duplicate payment of Benefits is made, MHHSI shall make a diligent effort to obtain the return of such payment. Notwithstanding the forgoing, MHHSI shall not have the right nor the responsibility to take any legal action to obtain the return of such payment, unless otherwise agreed by the Parties.

12.2 Plan Provisions. Except as may be separately agreed upon, MHHSI shall have neither the right nor the responsibility to take any legal action against any person, including Plan Sponsor or Plan Administrator, to enforce the provisions of the Plan.

13. BOOKS AND RECORDS

13.1 Record Retention. MHHSI shall maintain Plan records generated or received by it (i) in accordance with standards of record keeping customary in the health and welfare benefits administration industry, and (ii) for a period of six (6) years. After such period, all such records in the possession of MHHSI may be destroyed in the discretion of MHHSI without notice to Plan Sponsor, Covered Persons or any other person or entity. "Plan Records" are defined as: 1) claims history; 2) current eligibility of Covered Persons; 3) large case management files; 4) individual large claims reports over $30,000, excluding the identification of such individuals; and 5) received but unpaid claims.

13.2 Upon Termination. After receipt of Plan Sponsor's written request following the termination of this Agreement, MHHSI shall deliver to Plan Sponsor or its designee those Plan Records (as defined in Section 13.1 above) in MHHSI's possession that are described in such request. The Plan Records may be delivered in the format in which they are maintained by MHHSI but shall include format explanations and documentation to enable the recipient to have reasonable access to the information. Plan Sponsor shall reimburse MHHSI for all costs incurred in providing such Plan Records, including the costs of programming and computer

changes. Plan Sponsor shall also pay MHHSI a mutually agreed-upon fee, but in no event less than a reasonable fee, for any services requested or required of MHHSI for supplying additional information not contained in the Plan Records. To the extent the Plan Records or accompanying documentation includes systems or programs developed by, owned by, or licensed to MHHSI, (i) MHHSI shall have the right to safeguard their secrecy and use by requiring the transfer to occur in such a manner that will not permit the recipient to have continuing use of the protected systems or programs, and (ii) the recipient shall not copy, distribute, sublicense or otherwise take advantage of the protected systems or programs. MHHSI may choose to deliver Plan Records to Plan Sponsor after termination of this Agreement even if not requested by Plan Sponsor. MHHSI shall be entitled to retain copies of Plan Records at its own expense.

14. CONFIDENTIALITY

14.1 Legal Withholding of Information. MHHSI may withhold Covered Persons medical records or other information from any person where MHHSI reasonably determines that it is obligated to do so under federal or state confidentiality statutes or regulations.

14.2 Confidentiality. Each Party ("***Receiving Party***") shall keep confidential all Confidential Information (defined below) of the other Party ("***Disclosing Party***") in accordance with this Subsection.

14.2.1 *Confidential Information Defined.* "***Confidential Information***" means all information, whether written or oral, that relates to the Disclosing Party and is not generally available to the public, or which would reasonably be considered confidential or proprietary, or which is marked "Confidential" or "Proprietary" by the Disclosing Party. Without limiting the generality of the foregoing, Confidential Information includes, without limitation, (i) information relating to technical or financial aspects of the Disclosing Party, (ii) information describing MHHSI services pursuant to this Agreement, (iii) the terms of this Agreement, and (iv) all records relating to the Plan and Covered Persons maintained by MHHSI pursuant to this Agreement.

14.2.2 *Obligation of Confidentiality*. Receiving Party will hold Disclosing Party's Confidential Information in the strictest of confidence and will not disclose such information to any third party without the Disclosing Party's prior written consent. Receiving Party will restrict disclosure of the Confidential Information solely to its employees, officers, directors, agents and consultants with a "need to know" the Confidential Information for purposes of this Agreement.

14.2.3 *Exceptions*. Notwithstanding the forgoing, Receiving Party may disclose the Confidential Information (i) in response to court order or request of a government or regulatory authority, (ii) for an audit or investigation conducted under ERISA, (iii) in connection with litigation relating to this

Agreement or MHHSI's performance of services under this Agreement, (iv) as otherwise required by law or legal process, or (v) as necessary or appropriate to provide services under this Agreement. Additionally, MHHSI may use Plan data for statistical or reporting purposes in a manner that it reasonably expects will not disclose Confidential Information identifiable with specific Covered Persons and may disclose Confidential Information upon request of Plan Sponsor, Plan Administrator, or either's designee.

14.2.4 *Remedies***.** Receiving Party acknowledges that remedies at law may be inadequate to protect Disclosing Party against any actual or threatened breach of this Section, and without prejudice to any other rights or remedies otherwise available, Receiving Party agrees that Disclosing Party is entitled to seek injunctive or other equitable relief as a remedy for any such breach in a court of competent jurisdiction. Such a remedy shall not be deemed to be the exclusive remedy for a breach of this Agreement but shall be in addition to all other remedies available at law or equity.

14.3 Business Associate Agreement. Both Parties agree to comply with the terms and conditions of the Business Associate Agreement set forth in **Exhibit C** and shall enter into such Business Associate Agreement. If there are any inconsistencies between the terms of this Agreement and the terms of the Business Associate Agreement, the terms of the Business Associate Agreement shall control.

15. GENERAL PROVISIONS

15.1 Entire Agreement; Amendments. This Agreement, including all schedules, exhibits, attachments, recitals, and amendments hereto, and the Plan Document/Summary Plan Description, constitutes the entire Agreement between the Parties and supersedes all prior proposals, discussions, and writings by and between the Parties related to the subject matter of this Agreement. This Agreement may be modified, amended, or supplemented, but only by a written instrument executed by the Parties, except that fee adjustments proposed by MHHSI in accordance with this Agreement and not objected to by Plan Sponsor pursuant to Section 4.2.2. shall also constitute binding amendments.

15.2 Incorporation By Reference. Any schedules, exhibits or attachments referred to in this Agreement are attached to and incorporated into this Agreement by reference.

15.3 Tax, ERISA, and COBRA Compliance. MHHSI shall not be responsible for establishing or maintaining the Plan or Plan Sponsor in compliance with federal or state taxing statutes, ERISA, COBRA, or other applicable state or federal laws or regulations, or for obtaining any tax benefits that may be available to Plan Sponsor, the Plan or Covered Persons. If MHHSI provides sample plan documents or administrative forms, MHHSI makes no representations or warranties as to their legal sufficiency. Plan Sponsor or Plan Administrator shall have the final authority and responsibility for approving the form and content of all Plan related documents and forms. MHHSI shall be responsible for complying

with all statutory and regulatory requirements imposed on third party administrators under Texas law and with all statutory and regulatory requirements related to an administrative function performed by MHHSI under this Agreement.

15.4 Publicity. Neither Party shall use the other Party's name, copyrights, symbols, trademarks, or service marks in advertising or promotional materials or otherwise without the prior written consent of such other Party.

15.5 Severability. If any term or provision of this Agreement is to be held illegal, invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law; and in lieu of each such illegal, invalid or unenforceable provision the Parties shall use their best reasonable efforts to add as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be legal, valid, and enforceable.

15.6 Force Majeure. The term "***force majeure***" shall mean an act of God, strike, walk-out, or other industrial disturbance, war, riot, lightning, fire, storm, flood, explosion, governmental action or delay, unavailability or breakdown of equipment, and any other cause not reasonably within the control of the Party claiming suspension of its performance under this Agreement. The obligations of any Party under this Agreement, other than the obligation to make money payments, shall be suspended during the continuance of a force majeure applicable to that Party. The affected Party shall use all reasonable diligence to remove, to the extent reasonably practicable, the force majeure situation as quickly as possible without incurring excessive costs, but shall not be required to settle strikes, walk-outs, or other labor difficulties contrary to its wishes.

15.7 Governing Law, Jurisdiction and Venue. To the extent not preempted by ERISA or other federal law, this Agreement shall be governed by and construed under the laws of the State of Texas. By entering into this Agreement, Plan Sponsor agrees to personal jurisdiction in the courts of the State of Texas and agrees that Texas is the only appropriate venue for any action brought to interpret or enforce any provision of this Agreement, or which may otherwise arise under or relate to the subject matter of this Agreement. The Parties expressly agree that the exclusive venue of all disputes, claims and lawsuits arising hereunder shall lie in the state or federal courts located in Harris County, Texas.

15.8 Notices. All notices shall be in writing and shall be hand-delivered, transmitted by facsimile, or sent by registered or certified mail, return receipt requested, to the address set forth on the signature page of this Agreement or to such other address furnished by the addressee. A notice delivered by hand-delivery or facsimile shall be deemed given only when actually received, which may be evidenced by delivery receipt or successful transmission confirmation. A notice sent by registered or certified mail shall be deemed given on the first to occur of its actual receipt or the third day after the date mailed as evidenced by the sender's certified or registered mail receipt.

15.9 Waiver. Waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any prior, concurrent or subsequent breach of the same or similar provision. None of the provisions of this Agreement shall be considered waived by either Party except when such waiver is given in writing.

15.10 Subcontractors**.** MHHSI reserves the right to obtain the services of persons or firms having special knowledge or facilities in performing its duties under this Agreement. Charges for such services, except as expressly provided in this Agreement or as agreed to be the Parties, will be the responsibility of MHHSI.

15.11 Construction. The Parties mutually acknowledge that each has reviewed this Agreement in its entirety and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation or application of this Agreement or the interpretation or application of any amendments hereto, if any. Unless the context clearly indicates otherwise, as used in this Agreement the verbs "shall," "must," and "will" each creates an absolute right or obligation, whereas the terms "may," "can," or "has the option to" each mean that the subject is permitted to but not obligated to take the designated action. The word "including" or "include" is not limiting, and unless the context clearly indicates otherwise the word "or" is not exclusive.

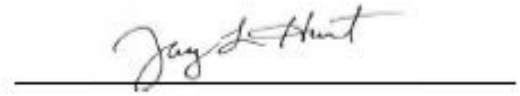
15.12 Section Headings. The section headings contained in this Agreement are for convenience of reference only and may not be construed as part of this Agreement or as a limitation on the scope of the particular sections.

15.13 Counterparts. Any signature transmitted by facsimile or by sending a scanned copy by electronic mail or similar electronic transmission shall be deemed an original signature.

15.14 Other Versions of this Document. The following shall have the same legal force and effect as an original of this document: a facsimile, photocopy, imaged or other electronic version.

The Parties have executed this Agreement effective as of the Effective Date set forth above.

MEMORIAL HERMANN HEALTH SOLUTIONS, INC.

By: 

Name: Jay Hurt

Title: Chief Executive Officer

Notice Address: 929 Gessner Road, Ste 1500 Houston, TX 77024

PLAN SPONSOR

By: _____

Printed Name: _____

Title: _____

Notice Address: _____

_____

With a copy to:

Memorial Hermann Health System
929 Gessner Road, Suite 2700
Houston, TX 77024
Attn: Chief Legal Officer

TABLE OF CONTENTS

EXHIBITS

EXHIBIT A

ADMINISTRATIVE SERVICES

MHHSI will provide the following services for the Plan, but only those which are designated and for which a fee is provided on Exhibit B (entitled "Fees"). These services need not commence until thirty (30) days after MHHSI's initial receipt of all necessary Plan implementation data.

MHHSI BASIC SERVICES

1. Eligibility, Enrollment, Customer Service, and Account Management

a. Eligibility and Enrollment

MHHSI will review applications in an enrollment spreadsheet for coverage and renewals under the Plan and process those applications and renewals in accordance with written guidelines of MHHSI.

b. Information to Covered Persons and Health Care Providers

Based on records and information provided by Plan Sponsor, MHHSI will provide to Covered Persons and health care providers information concerning eligibility verification, Benefits available under the Plan, and the status of specific claims. This information will be provided by telephone during normal business hours, including toll-free access.

c. Meetings with Plan Sponsor

MHHSI will attend meetings with Plan Sponsor as reasonably requested and necessary for the provision of services under this Agreement.

d. Reports

MHHSI will provide the following reports: (i) annual reports included, from time-to-time, in the MHHSI standard reporting package, which reports will be provided on the time schedule agreed to by the Parties; and (ii) quarterly reports of Benefit payments made under the Plan.

Upon request or as required by law, MHHSI will provide Plan Sponsor with data maintained by MHHSI that is required by Plan Sponsor to prepare reports and filings required by the federal government. MHHSI will provide Plan Sponsor with data needed for Plan Sponsor to file 1094/1095 forms with the Internal Revenue Service.

2. Claims Administration

MHHSI will administer claims in accordance with the terms of the Plan, including the Plan Document. Specific provisions pertaining to Plan Sponsor's claims liability are set forth in **Exhibit D** to this Agreement.

Claims administration services shall include the following:

a. Receive and review claims and claim documents;

b. Verify eligibility and medical necessity and determine amounts payable under the Plan in conjunction with the Plan Document provisions concerning reasonableness of charges and preferred provider or other service arrangements;

c. Correspond with claimants to obtain any required additional information and to determine whether other coverage for a claim may exist under subrogation rights or other benefit plans, insurance contracts, or government-sponsored benefit programs;

d. Prepare and mail or provide via electronic communication explanations of benefits or denial of benefits;

e. Issue Benefits payments drawn on the Claims Account to the health care providers who rendered the covered Benefits, or if the Covered Person has not assigned payment of the claim, to the Covered Person;

f. Take reasonable steps, in accordance with the Plan Document and this Agreement, to recover or offset erroneous payments of Benefits;

g. Process claim reviews and appeals in accordance with the Plan Document, this Agreement, and applicable federal law;

h. Process any written requests, issues or comments received from claimant on appeals of denied Benefits; and

i. Determine any amount due and payable and make payment from the Claims Account or issue a denial notice.

3. Subrogation Recovery Services

MHHSI will provide services to collect claim payments from liable third parties, including corresponding with Covered Persons and requesting repayment in accordance with any subrogation provisions of the Plan. MHHSI will have no responsibility or liability for the refusal of Covered Persons to cooperate. MHHSI shall have no obligation to take any legal action to enforce the Plan's subrogation rights.

4. Utilization Review

In accordance with the Plan Document, and subject to applicable federal law, MHHSI will provide utilization review services. Utilization review services include evaluating eligibility for Benefits. This is done by evaluating the medical necessity, appropriateness and efficiency of health care services, hospital admissions, and length of inpatient hospital stay, through pre-admission certification, concurrent review, and retrospective review. Concurrent utilization review includes, among other things, continued stay review, which is a form of patient care review that occurs during a Covered Person's hospitalization and consists of reviewing the medical necessity for hospitalization longer than the originally recommended length of stay for purposes of determining whether such

additional stay is eligible for Benefits under the Plan.

5. Case Management

In accordance with the Plan Document and any guidelines approved by Plan Sponsor, and subject to applicable federal law, MHHSI will provide case management services. Case management focuses on the complex needs of a Covered Person and emphasizes the coordination and prioritization of needed services.

6. HIPAA Administration for Certificates of Creditable Coverage ("*CCC*")

MHHSI will issue certificates of creditable coverage in accordance with HIPAA.

7. Provider Network and Network Management

MHHSI will provide an adequate network of contracted health care service providers or will arrange for the provision of such a network to provide health care services to Covered Persons. MHHSI will notify Plan Sponsor as soon as possible of significant events that may affect the availability of and access to network providers, including termination or non-renewal of any contracts with such providers. It is understood and agreed that neither Plan Sponsor nor MHHSI is engaged in the practice of medicine. Network providers and other providers are solely responsible for all decisions regarding the medical care and treatment of Covered Persons and the traditional relationship between the physician and patient shall in no way be affected by or interfered with by any of the terms of this Agreement or any agreement between MHHSI and such providers. Accordingly, this Agreement is in no way intended to affect the responsibility of network providers and other providers to provide appropriate services to Covered Persons.

8. Coordination with Pharmacy Benefit Managers

MHHSI shall contract with a pharmacy benefit manager (the ***"PBM"***) on behalf of Plan Sponsor. MHHSI shall coordinate eligibility, claims and other necessary information with the PBM. Unless otherwise provided by the PBM, out of network drug claims shall be administered by MHHSI as medical claims, with each claim payment subject to the requirements for payment of claims under applicable law and this Agreement.

9. Plan Design

MHHSI will provide plan design services, including forms, notices, booklets, summary plan descriptions and other documents designed specifically for the Plan.

10. Covered Persons Database (Online)

MHHSI will maintain an online computerized database containing Covered Persons' coverage and claims information. Covered Persons will be able to access this database upon completing online enrollment for access.

11. Printing

a. MHHSI will coordinate the printing and mailing of standard identification cards and accompanying inserts for Covered Persons.

b. MHHSI will also coordinate the provision of electronic versions of personalized forms, benefit booklets, summary plan descriptions, provider directories, and other supplies designed specifically for the Plan.

12. Set Up

MHHSI will arrange for the loading of Plan benefit information and the establishment of designated staff.

ADDITIONAL SERVICES

1. Brokers

MHHSI, or its affiliate insurance company, will act as paying agent for commissions to any licensed agents or brokers who assist the Plan in enrolling eligible persons for coverage.

2. Procurement of Stop-Loss Coverage

MHHSI will arrange for a group health stop-loss insurance carrier to issue coverage to Plan Sponsor (via a policy issued to Plan Sponsor). Such coverage will be effective as of the first day of the Plan Year and will provide coverage for claims expenses above the Stop-Loss Threshold and in accordance with the stop-loss policy provisions.

3. Claims Run-Out

MHHSI will provide the following claims run-out services: Processing of claims incurred with dates of service prior to the termination date, but received after the termination date, for up to 24 months (i.e., run-off or run-out claims).

REGULATORY COMPLIANCE

MHHSI will post machine-readable files on its public website on behalf of Plan Sponsor to meet requirements under federal Transparency in Coverage regulations at 26 CFR 54.9815-2715A3(b), 29 CFR 2590.715- 2715A3(b), and 45 CFR 147.212(b).

EXHIBIT B
FEES
The fees payable to MHHSI for the services rendered under the Agreement to which this Exhibit is attached shall be as follows:

1. AMOUNT OF FEE

MHHSI TPA Pricing Schedule			
	MHHSI BASIC SERVICES	**Basis**	**Rate**
1	**Eligibility, Enrollment, Customer Service and, Account Management**	% of Premium	Included in the Basic Services fee Below
2	**Claims Administration**	% of Premium	Included in the Basic Services fee Below
3	**Subrogation Recovery Services**	% of Premium	Included in the Basic Services fee Below
4	**Utilization Review**	% of Premium	Included in the Basic Services fee Below
5	**Case Management**	% of Premium	Included in the Basic Services fee Below
6	**HIPAA CCC Administration**	% of Premium	Included in the Basic Services fee Below
7	**Provider Network and Network Management**	% of Premium	Included in the Basic Services fee Below
8	**Coordination with PBM**	% of Premium	Included in the Basic Services fee Below
9	**Plan Design**	% of Premium	Included in the Basic Services fee Below
10	**Covered Persons Database**	% of Premium	Included in the Basic Services fee Below
11	**Printing**	% of Premium	Included in the Basic Services fee below
12	**Set Up**	% of Premium	Included in the Basic Services fee below
Total Basic Services Fee		% of Premium	**15 % of Premium**
	FEES FOR ADDITIONAL SERVICES		
1.	**Stop-Loss Coverage**	% of Premium	17% of Premium
2.	**Claims Run Out (post-termination)**	% of Premium	TBD upon termination

2. PAYMENT OF FEES AND EXPENSES

The fees and expenses included in the Premium charged and provided for above shall be payable on or before the first (1st) day of each month, based upon the number of Covered Persons as of the fifteenth (15th) day of the preceding month, as reflected on the invoice provided by MHHSI.

3. RETURN OF SURPLUS

If MHHSI has not received the W-9 or any other requested documents from the Plan Sponsor within 90 days after the Plan Year ends, any surplus payment will not be processed until the Plan Sponsor contacts MHHSI.

EXHIBIT C

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this "Agreement") is effective as of _____, 20 (the "Effective Date") by and between Memorial Hermann Health Solutions, Inc., on behalf of itself and its affiliates ("Business Associate") and _____ ("Covered Entity"). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in Section 9(b) of this Agreement.

RECITALS

A. Business Associate and Covered Entity are parties to certain agreements and arrangements pursuant to which Business Associate performs certain services for Covered Entity (the "Services").

B. Covered Entity and Business Associate desire to enter into this Agreement to reflect their mutual understanding of the use, disclosure and general confidentiality obligations of Business Associate in connection with the delivery of the Services, as well as for Covered Entity and Business Associate to comply with the requirements of the implementing regulations at 45 Code of Federal Regulations ("C.F.R.") Parts 160 and 164, subparts A and E (the "Privacy Rule") and 45 C.F.R. Part 164, subparts A and C (the "Security Rule") for the Administrative Simplification provisions of Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996, as amended by any other statute, rule and/or regulation, including Division A, Title XIII of the American Recovery and Reinvestment Act of 2009 (Pub. L. No., 111-5) ("ARRA"), otherwise known as the Health Information Technology for Economic and Clinical Health Act ("HITECH") (collectively "HIPAA") and the Texas Medical Records Privacy Act, Tex. Health & Safety Code § 181.001 ("Texas Privacy Law").

AGREEMENTS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency which are hereby acknowledged, the parties hereto agree as follows:

1. Obligations of Business Associate.

a) Permitted Uses. Business Associate is permitted to use Covered Entity's Protected Health Information only to perform Services as may be requested by Covered Entity from time to time. Business Associate also may use Covered Entity's Protected Health Information as may be necessary for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

b) Permitted Disclosures. Business Associate will hold in confidence and not disclose any of Covered Entity's Protected Health Information except as may be permitted or required by this Agreement, as Required by Law, or to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1). To the extent that Business Associate may be requested to make a disclosure of Covered Entity's Protected Health Information that is Required by Law or to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(l), Business Associate shall provide Covered Entity with written notification of such requested disclosure within three (3) business days (giving Covered Entity an adequate opportunity to take whatever steps it deems necessary to prevent, limit the scope of or contest the disclosure). Covered Entity shall pay all of the costs and expenses incurred in connection with any attempt to prevent disclosure or limit the scope of any such disclosure, and Business Associate agrees that it will not unreasonably interfere with the actions Covered Entity takes in connection therewith.

c) Obligations of Business Associate. Except as expressly set forth in this Agreement, as necessary to provide the Services, or as otherwise requested in writing by Covered Entity:

i) **Activities on Behalf of Covered Entity**. Business Associate will not de-identify any of Covered Entity's Protected Health Information or engage in any activities on behalf of Covered Entity or in support of the Health Care Operations of Covered Entity, which activities use or reflect any of Covered Entity's Protected Health Information, except to the extent necessary to perform the Services as required under this Agreement.

ii) **Creation of Reports**. Business Associate will not create any reports or any record (in any form or medium) or any compilation or summary based on or reflecting any of Covered Entity's Protected Health Information.

iii) **Compliance with Law**. Business Associate will not contact any patient of Covered Entity. Business Associate will at all times comply with all applicable federal, state and local laws and regulations pertaining to patient records and confidentiality of patient information, including but not limited to HIPAA and the Texas Privacy Law.

d) **Minimum Necessary**. Business Associate will, in its performance of the Services, make reasonable efforts to use, disclose and request of Covered Entity, only the minimum amount of Covered Entity's Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure or request.

e) **Prohibition on Unauthorized Use or Disclosure**. Business Associate will neither use nor disclose any of Covered Entity's Protected Health Information, except as permitted or required by this Agreement or in writing by Covered Entity. This Agreement does not authorize Business Associate to use or disclose any of Covered Entity's Protected Health Information in a manner that would violate the Privacy Rule or the Texas Privacy Law if done by Covered Entity. Covered Entity shall not request Business Associate to use or disclose any of Covered Entity's Protected Health Information in any manner that would not be permissible under the Privacy Rule or the Texas Privacy Law if done by Covered Entity.

f) **Information Safeguards**. Business Associate will use appropriate safeguards to preserve the integrity and confidentiality of, and to prevent intentional or unintentional non-permitted use or disclosure of Covered Entity's Protected Health Information, including in compliance with 45 C.F.R. § 164.530(c) and any other implementing regulation issued by the United States Department of Health and Human Services ("DHHS").

g) **Subcontractors and Agents**. Business Associate will require any of its Subcontractors and agents, to which Business Associate is permitted in writing by Covered Entity to disclose Covered Entity's Protected Health Information, to provide reasonable assurance, evidenced by written contract, that such Subcontractor or agent will comply with the same privacy and security obligations with respect to Covered Entity's Protected Health Information that are applicable to Business Associate under this Agreement. Business Associate acknowledges that any failure of any Subcontractor or agent of Business Associate to adhere to the requirements of this Agreement shall be deemed a breach of such requirement by Business Associate.

2. **Compliance with Security Rule; Security Incidents**. As set forth and more fully described in Section 7(a), Business Associate agrees to implement appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of any of Covered Entity's Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate shall: (x) report to Covered Entity any successful unauthorized access, use, disclosure, modification or destruction of Covered Entity's Electronic Protected Health Information or interference with system operations in an information system containing Covered Entity's Electronic Protected Health Information and (y) report the aggregate number of unsuccessful, unauthorized attempts to access, use, disclose, modify or destroy Covered Entity's Electronic Protected Health Information or interfere with system operations in an information system containing Covered Entity's Electronic Protected Health Information, provided that: (a) such reports will be provided only as frequently as the parties hereto

mutually agree, but no more than once per month; and (b) if the definition of "Security Incident" under the Security Rule is amended to remove the requirement for reporting "unsuccessful" attempts to use, disclose, modify or destroy Covered Entity's Electronic Protected Health Information, the portion of this Section 2 addressing the reporting of unsuccessful, unauthorized attempts to access, use, disclose, modify or destroy Covered Entity's Electronic Protected Health Information will no longer apply as of the effective date of such amendment.

3. Individual Rights.

a) Access. Business Associate will, within ten (10) business days following Covered Entity's request, make available to Covered Entity or, at Covered Entity's direction, to an Individual (or the Individual's personal representative) for inspection and obtaining copies of, Covered Entity's Protected Health Information about the Individual that is in Business Associate's custody or control, so that Covered Entity may meet its access obligations under 45 C.F.R. § 164.524.

b) Amendment. Business Associate will, upon receipt of written notice from Covered Entity, promptly amend, or at the request of Covered Entity permit Covered Entity access to amend, any portion of Covered Entity's Protected Health Information, so that Covered Entity may meet its amendment obligations under 45 C.F.R. § 164.526.

c) Disclosure Accounting. Business Associate will not make any disclosure of Covered Entity's Protected Health Information other than as set forth in this Agreement. Without limitation of the foregoing, Business Associate will record certain disclosures of Covered Entity's Protected Health Information as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Covered Entity's Protected Health Information in accordance with 45 C.F.R. § 164.528. Business Associate further agrees to provide to Covered Entity information collected in accordance with this Section 3(c) to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Covered Entity's Protected Health Information in accordance with 45 C.F.R. § 164.528.

d) Restriction Agreements and Confidential Communications. Business Associate will comply with any agreement that Covered Entity makes that either (i) restricts the use or disclosure of any of Covered Entity's Protected Health Information pursuant to 45 C.F.R. § 164.522(a), or (ii) requires confidential communication about any of Covered Entity's Protected Health Information pursuant to 45 C.F.R. § 164.522(b), provided that Covered Entity notifies Business Associate in writing of the restriction or confidential communication obligations that Business Associate must follow.

4. Breach of Privacy Obligations. Business Associate will report to Covered Entity in writing any use or disclosure of Covered Entity's Protected Health Information not permitted by this Agreement. Business Associate will make the report to Covered Entity's Privacy Officer not more than seventy-two (72) hours after Business Associate learns of such non-permitted use or disclosure. Business Associate's report will at least:

a) identify the nature of the non-permitted use or disclosure including how such use or disclosure was made;

b) identify Covered Entity's Protected Health Information used or disclosed;

c) identify who received the non-permitted disclosure;

d) identify what corrective action Business Associate took or will take to prevent further non-permitted uses or disclosures;

e) identify what Business Associate did or will do to mitigate any deleterious effect of the non-permitted use or disclosure; and

f) provide such other information, including a written report, as Covered Entity may reasonably request.

5. Term and Termination of Agreement.

a) Term. This Agreement shall be effective as of the Effective Date and shall terminate upon termination or expiration of the underlying Services agreement or pursuant to the provisions herein.

b) Right to Terminate for Breach. Either party hereto may terminate this Agreement if it determines, in its sole discretion, that the other party hereto has breached any provision of this Agreement. A party hereto may exercise its right to terminate this Agreement by providing the other party hereto five (5) calendar days written notice of termination, stating the breach of this Agreement that provides the basis for the termination. Any termination pursuant to this Section 5(b) will be effective immediately upon the expiration of such five (5) day period or at such other date specified in the notice of termination.

c) Right to Terminate on Regulation or Policy Change. In the event there is a change in the Privacy Rule, the Texas Privacy Law or other federal or state statutes, rules or regulations relating to the privacy of health information, or Covered Entity's policies and procedures related to the privacy of health information (collectively, "Compliance Policies"), Covered Entity shall have the immediate right to initiate negotiations regarding the good faith amendment or supplement to this Agreement, upon notice to Business Associate, to enable Covered Entity to comply with any such change to the Privacy Rule, the Texas Privacy Law or other federal or state statute, rule or regulation, or Covered Entity's Compliance Policies. Should the parties hereto be unable in good faith to renegotiate this Agreement as to bring Covered Entity into compliance with the Privacy Rule, the Texas Privacy Law or other federal or state statute, rule or regulation, or bring Business Associate into compliance with Covered Entity's Compliance Policies, in either case within thirty (30) calendar days of the date on which notice of a desired change to this Agreement was given to Business Associate, then Covered Entity shall be entitled to terminate this Agreement by giving Business Associate five (5) calendar days prior written notice of such termination.

d) Termination of this Agreement. Any and all obligations of Business Associate with respect to Covered Entity's Protected Health Information shall continue for the periods set forth in Section 5(e).

e) Obligations on Termination.

i) Return or Destruction of Covered Entity's Protected Health Information as Feasible. Upon termination or other conclusion of this Agreement, Business Associate will return to Covered Entity or destroy all of Covered Entity's Protected Health Information in whatever form or medium, including all copies thereof and all data, compilations, and other works derived therefrom, including any such works that allow identification of any individual who is a subject of Covered Entity's Protected Health Information. Business

Associate will require any Subcontractor or agent, to which Business Associate has disclosed any of Covered Entity's Protected Health Information as permitted by Section 1(g) of this Agreement to return to Business Associate (so that Business Associate may return it to Covered Entity) or destroy all of Covered Entity's Protected Health Information in whatever form or medium received from Business Associate, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of Covered Entity's Protected Health Information, and certify on oath to Business Associate that all such information has been returned or destroyed. Business Associate will complete these obligations as promptly as possible, but not later than thirty (30) calendar days following the effective date of the termination or other conclusion of this Agreement.

In the event that Business Associate determines that returning or destroying Covered Entity's Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. If Covered Entity agrees (which agreement shall not be unreasonably withheld) that it is infeasible for Business Associate to return or destroy Covered Entity's Protected Health Information, then Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Information.

ii) **Continuing Obligations of Business Associate**. Business Associate's obligations to indemnify Covered Entity and to protect the privacy and confidentiality of Covered Entity's Protected Health Information, in each case as specified in this Agreement, will be continuous and survive termination or other conclusion of this Agreement.

6. **INDEMNITY. INDEMNIFICATION OF COVERED ENTITY. BUSINESS ASSOCIATE WILL DEFEND, INDEMNIFY AND HOLD HARMLESS COVERED ENTITY AND ITS AFFILIATES AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, MANAGERS, PARTNERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, SUITS, LIABILITIES, DEMANDS, LOSSES, DAMAGES, COSTS, PROCEEDINGS OR EXPENSES OF ALL KINDS, INCLUDING COSTS, EXPENSES, FINES, AMOUNTS PAID IN SETTLEMENTS OR JUDGMENTS, REASONABLE ATTORNEYS' FEES, WITNESSES' FEES, INVESTIGATION EXPENSES, AND ANY EXPENSES INCIDENT THERETO (COLLECTIVELY, "LOSSES"), ARISING OUT OF OR IN CONNECTION WITH (I) ANY NON PERMITTED USE OR DISCLOSURE OF COVERED ENTITY'S PROTECTED HEALTH INFORMATION BY BUSINESS ASSOCIATE OR ANY SUBCONTRACTOR OR AGENT UNDER BUSINESS ASSOCIATE'S CONTROL, OR (II) ANY BREACH OF THIS AGREEMENT BY BUSINESS ASSOCIATE OR ANY SUBCONTRACTOR OR AGENT UNDER BUSINESS ASSOCIATE'S CONTROL. THIS INDEMNITY OBLIGATION APPLIES WHETHER OR NOT (I) OR (II) HEREIN IS CAUSED OR CONTRIBUTED TO BY THE CONCURRENT OR CONTRIBUTING FAULT OR NEGLIGENCE OF COVERED ENTITY, ITS AFFILIATES, AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, MANAGERS, PARTNERS, EMPLOYEES, AGENTS, SUCCESSORS OR ASSIGNS**

_____ JH **(TO BE INITIALED BY THE PARTIES)**

a) **INDEMNIFICATION OF BUSINESS ASSOCIATE. COVERED ENTITY WILL DEFEND, INDEMNIFY AND HOLD HARMLESS BUSINESS ASSOCIATE AND ITS**

DIRECTORS, OFFICERS, MEMBERS, MANAGERS, PARTNERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL LOSSES, ARISING OUT OF: (I) ANY NON PERMITTED USE OR DISCLOSURE OF COVERED ENTITY'S PROTECTED HEALTH INFORMATION BY COVERED ENTITY OR ANY SUBCONTRACTOR OR AGENT UNDER COVERED ENTITY'S CONTROL (OTHER THAN THE BUSINESS ASSOCIATE), OR (II) ANY BREACH OF THIS AGREEMENT BY COVERED ENTITY OR ANY SUBCONTRACTOR OR AGENT UNDER COVERED ENTITY'S CONTROL (OTHER THAN THE BUSINESS ASSOCIATE). THIS INDEMNITY OBLIGATIONS APPLIES WHETHER OR NOT (I) OR (II) HEREIN IS CAUSED OR CONTRIBUTED TO BY THE CONCURRENT OR CONTRIBUTING FAULT OR NEGLIGENCE OF BUSINESS ASSOCIATE, ITS AFFILIATES, AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, MANAGERS, PARTNERS, EMPLOYEES, AGENTS, SUCCESSORS OR ASSIGNS.

_____ JH _____**(TO BE INITIALED BY THE PARTIES)**

b) INDEMNIFICATION PROCEDURE. IN THE EVENT THAT ANY DEMAND OR CLAIM IS MADE OR SUIT IS COMMENCED AGAINST ONE OF THE PARTIES HERETO ("INDEMNITEE"), WRITTEN NOTICE OF SUCH DEMAND, CLAIM OR SUIT SHALL BE PROVIDED TO THE OTHER PARTY HERETO ("INDEMNITOR"). , WITHIN THREE (3) BUSINESS DAYS OF RECEIPT. FAILURE TO GIVE SUCH NOTICE WITHIN THE TIME REQUIRED SHALL NOT RELIEVE INDEMNITOR OF ITS OBLIGATIONS HEREUNDER EXCEPT TO THE EXTENT THE FAILURE OF NOTICE HAS PREJUDICED THE DEFENSE OF SUCH CLAIM. INDEMNITOR SHALL DEFEND A CLAIM WITH COUNSEL SATISFACTORY TO INDEMNITEE IN INDEMNITEE'S REASONABLE OPINION AND INDEMNITEE SHALL COOPERATE FULLY IN SUCH DEFENSE. NO SETTLEMENT BY INDEMNITOR SHALL BE BINDING UPON INDEMNITEE WITHOUT INDEMNITEE'S PRIOR WRITTEN CONSENT. NOTWITHSTANDING THE FOREGOING, IF INDEMNITOR FAILS TO ASSUME ITS OBLIGATION TO DEFEND INDEMNITEE OR IF THERE IS A CONFLICT OF INTEREST WHICH PREVENTS INDEMNITOR FROM ASSUMING ITS OBLIGATION TO INDEMNIFY INDEMNITEE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS SECTION 6(C), INDEMNITEE MAY ASSUME ITS OWN DEFENSE TO PROTECT ITS INTERESTS AND INDEMNITOR SHALL REIMBURSE INDEMNITEE ON A MONTHLY BASIS FOR ANY EXPENSES REASONABLY INCURRED BY INDEMNITEE IN CONNECTION WITH THE INVESTIGATION AND DEFENSE OF ANY SUCH CLAIM.

7. Representations and Warranties of Business Associate Regarding EPHI Security Standards; General Terms Regarding EPHI Security Standards.

a) Representations and Warranties of Business Associate Regarding EPHI Security Standards. Business Associate hereby represents and warrants to Covered Entity that:

i) Administrative Safeguards. On or before September 23, 2013 (the "Compliance Date"), Business Associate shall have (i) implemented policies and procedures to prevent, detect, contain, and correct security violations in accordance with the implementation specifications set forth at 45 C.F.R. § 164.308(a)(1)(ii); (ii) identified a security official who is responsible for the development and implementation of the policies and procedures required by 45 C.F.R. Part 164, Subpart C "Security Standards for the Protection of Electronic Protected Health Information" (the "EPHI Security Standards"); (iii) implemented policies and procedures to ensure appropriate access to Covered Entity's Electronic Protected Health Information by its employees, agents or representatives as provided under 45 C.F.R. § 164.308(a)(4), and to prevent its employees, agents or representatives who should not have access under the standards set forth at 45 C.F.R. § 164.308(a)(4) from obtaining access to Covered Entity's Electronic Protected Health Information in accordance with the implementation specifications set forth in 45 C.F.R. § 164.308(a)(3)(ii); (iv) implemented policies and procedures for authorizing access to Covered

Entity's Electronic Protected Health Information that is consistent with the requirements of 45 C.F.R. Part 164, Subpart E "Privacy of Individually Identifiable Health Information" in accordance with the implementation specifications set forth at 45 C.F.R. § 164.308(a)(4)(ii); (v) implemented a security awareness and training program for all of its employees and agents (including its directors and officers) in accordance with the implementation specifications set forth at 45 C.F.R. § 164.308(a)(5)(ii); (vi) implemented policies and procedures to address "Security Incidents" in accordance with the implementation specification set forth at 45 C.F.R. § 164.308(a)(6)(ii); and (vii) established (and implemented as needed) policies and procedures for responding to an emergency or other occurrence, including fire, vandalism, system failure and natural disaster, that damages any system that may contain Covered Entity's Electronic Protected Health Information in accordance with the implementation specifications set forth at 45 C.F.R. § 164.308(a)(7)(ii). Commencing on and after the Compliance Date, Business Associate will perform periodic technical and nontechnical evaluations in response to any environmental or operational changes affecting the security of Covered Entity's Electronic Protected Health Information, and Business Associate will use such evaluations to establish the extent to which Business Associate's administrative safeguards meet the requirements of the EPHI Security Standards.

ii) **Physical Safeguards**. On or before the Compliance Date, Business Associate shall have (i) implemented policies and procedures to limit physical access to its electronic information systems and the locations in which such electronic information systems are maintained in accordance with the implementation specifications set forth at 45 C.F.R. § 164.310(a)(2); (ii) implemented policies and procedures that specify the proper functions to be performed, the manner in which those functions are to be performed, and the physical attributes of the surroundings of a specific workstation or class of workstation that can access Covered Entity's Electronic Protected Health Information ; (iii) implemented physical safeguards for all workstations that access Covered Entity's Electronic Protected Health Information to restrict access to authorized users only; and (iv) implemented policies and procedures that govern (A) the receipt and removal of hardware and electronic media that contain Covered Entity's Electronic Protected Health Information into and out of a location, and (B) the movement of such Covered Entity's Electronic Protected Health Information within each such location in accordance with the implementation specifications set forth at 45 C.F.R. § 164.310(d)(2).

iii) **Technical Safeguards**. On or before the Compliance Date, Business Associate shall have (i) implemented technical policies and procedures for electronic information systems that maintain Covered Entity's Electronic Protected Health Information to allow access only to those persons or software programs that have been granted access rights as specified at 45 C.F.R. § 164.308(a)(4) in accordance with the implementation specifications set forth at 45 C.F.R. § 164.312(a)(2); (ii) implemented hardware, software, or procedural mechanisms that record and examine activity in any information systems that contains or uses Covered Entity's Electronic Protected Health Information ; (iii) implemented policies and procedures to protect Covered Entity's Electronic Protected Health Information from improper alteration or destruction in accordance with the implementation specification set forth at 45 C.F.R. § 164.312(c)(2); (iv) implemented procedures to verify that a person or entity seeking access to Covered Entity's Electronic Protected Health Information is authorized to receive access to such Covered Entity's Electronic Protected Health Information ; and (v) implemented technical security measures to guard against unauthorized access to any of Covered Entity's

Electronic Protected Health Information that is being transmitted over an electronic communications network in accordance with the implementation specifications set forth at 45 C.F.R. § 164.312(e)(2).

iv) Policies and Procedures and Documentation Requirements. On or before the Compliance Date, Business Associate shall have implemented reasonable and appropriate policies and procedures to comply with the standards, implementation specifications, or other requirements of the EPHI Security Standards, taking into account the factors specified at 45 C.F.R. § 164.306(b)(2)(i), (ii), (iii) and (iv). Commencing on and after the Compliance Date, Business Associate shall (i) maintain the policies and procedures implemented to comply with the EPHI Security Standards in written or electronic form, and (ii) if an action, activity or assessment is required by 45 C.F.R. Part 164, Subpart C "Security Standards for the Protection of Electronic Protected Health Information" to be documented, maintain a written or electronic record of the action, activity, or assessment in accordance with the implementation specifications set forth at 45 C.F.R. § 164.316(b)(2).

b) Notification in the Case of Breach Business Associate shall either (i) render Covered Entity's Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals using the technologies and methodologies set forth in the guidance promulgated by the Secretary on April 27, 2009, 74 Fed. Reg. 19006 (April 27, 2009), as amended on August 24, 2009, 74 Fed. Reg. 42744 (Aug. 24, 2009), and as may be further amended from time to time, or (ii) within twenty four (24) hours of discovery, notify Covered Entity of any Breach relating to Covered Entity's Unsecured Protected Health Information in the event of any such Breach, which notice shall be in compliance with the requirements of the regulations relating to notifications of Breaches of Unsecured Protected Health Information as codified at 45 CFR Part 164, Subpart D.

c) General Terms Regarding EPHI Security Standards. Business Associate and Covered Entity each acknowledge and agree that the provisions included in this Section 7 are intended to address certain provisions included in the ARRA, and if at any time after the Effective Date any of the provisions included in this Section 7 are modified, amended, supplemented, removed or otherwise changed in any manner as a result of any change to the ARRA or any other applicable state, federal or local law, the provisions of this Section 7 may be modified, amended, supplemented, removed or otherwise changed so as to comply with any such modification, amendment, supplement, removal or other change to the ARRA or any other applicable state, federal or local law; provided that in no event shall Business Associate be required to perform any act or obligation beyond what is required by the ARRA or any other applicable state, federal or local law. Notwithstanding anything to the contrary set forth in this Section 7, Covered Entity acknowledges and agrees that with respect to any implementation specification that is categorized as "Addressable" in the Security Rule, Business Associate shall in its sole reasonable discretion have the right to either (i) implement the implementation specification as set forth in the Security Rule if Business Associate determines that such implementation specification is a reasonable and appropriate safeguard in Business Associate's environment when analyzed with reference to the likely contribution to protecting Covered Entity's Protected Health Information or (ii) document why Business Associate has determined that implementation of the implementation specification as set forth in the Security Rule is not reasonable and appropriate and implement an equivalent alternative measure that is reasonable and appropriate and will further contribute to protecting Covered Entity's Protected Health Information.

8. Breach of Representations and Warranties by Business Associate Relating to EPHI Security Standards. In addition to any and all remedies which may be available to Covered Entity under Section 5 of this Agreement or any other provision of this Agreement, Business Associate covenants and agrees that in the event of a breach by Business Associate of any of its representations and warranties set forth in Section 7(a) of this Agreement, Business Associate (i) shall provide Covered Entity with written notice of any such breach within five (5) calendar days of the discovery of such breach, which notice shall indicate, at a minimum, the nature of the breach and the activities Business Associate has taken or will take to

remedy such breach; and (ii) may be prohibited from receiving any of Covered Entity's Protected Health Information until such breach is remedied to Covered Entity's sole reasonable satisfaction.

9. General Provisions.

a) Inspection of Internal Practices, Books, and Records. Business Associate will make its internal practices, books, and records relating to its use and disclosure of Covered Entity's Protected Health Information available to Covered Entity and to DHHS to determine Business Associate's compliance with the terms and conditions of this Agreement and Covered Entity's compliance with 45 C.F.R. Part 164, Subpart E "Privacy of Individually Identifiable Health Information." Business Associate acknowledges and agrees that its failure to provide Covered Entity or DHHS with access to such records shall constitute a material breach of this Agreement and shall subject this Agreement to termination under Section 5(b).

b) Definitions. The terms "Covered Entity's Protected Health Information," and "Covered Entity's Electronic Protected Health Information" have the meanings set out in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity in connection with the provision of the Services under this Agreement. The term "Health Care Operations" has the meaning set out in 45 C.F.R. § 164.501. The term "Required by Law" has the meaning set out in 45 C.F.R. § 164.103. The term "use" means, with respect to Covered Entity's Protected Health Information, utilization, employment, examination, analysis or application within Business Associate. The terms "disclose" and "disclosure" mean, with respect to Covered Entity's Protected Health Information, the release, the transfer, providing access to or divulging to a person or entity not within Business Associate or Covered Entity. Other capitalized terms used but not defined herein shall have the respective meanings given to such terms in the Privacy Rule or Security Rule.

c) Amendment. Subject to the provisions of Section 5(c) of this Agreement, the parties hereto agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA or any other legal requirement related to the use and disclosure of health information.

d) Counterparts; Facsimile/PDF Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and when taken together shall constitute one agreement. The parties hereto agree that facsimile or PDF transmission of original signatures shall constitute and be accepted as original signatures.

e) Notices. Any notices to be given hereunder shall (i) be in writing, (ii) be addressed to the person and address set forth below (or to such other person or address as either party hereto may so designate from time to time), (iii) be deemed to have been given on the date of delivery if transmitted by courier, or one day following traceable delivery to a nationally recognized overnight delivery service with instructions for overnight delivery if sent by such overnight delivery service, and (iv) be transmitted by courier for hand delivery, or delivered by nationally recognized overnight delivery service with instructions for overnight delivery:

If to Covered Entity: _____

_____

_____

_____

If to Business Associate: Memorial Hermann Health Solutions, Inc.
909 Frostwood,

Suite 2.205
Houston, TX 77024
Attn: HIPAA Privacy Officer
Fax: (713) 338-4542
Phone: 713-338-5983

f) **Entire Agreement; Successors; and Assignment**. This Agreement and the exhibits attached hereto constitute the entire understanding between the parties hereto with respect to the subject matter hereof. No party hereto shall assign or otherwise transfer this Agreement or any of its rights hereunder, or delegate any of its obligations hereunder, without the prior written consent of the other party hereto; provided, however, that Covered Entity shall be permitted, without the consent of Business Associate to assign or otherwise transfer this Agreement or any of its rights hereunder: (i) upon the purchase or sale of all or substantially all of the assets or stock of Covered Entity or the transfer (by operation of law or otherwise) of the ownership or control of Covered Entity, to the purchaser of such assets or stock or the transferee of such interests, or (ii) to any affiliate of Covered Entity. Subject to the foregoing, this Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon the parties hereto, and each of their respective successors, heirs and assigns.

g) **Choice of Law**. All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement and the exhibits hereto shall be governed by, and construed in accordance with, the laws of the State of Texas, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Texas or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the laws of the State of Texas.

h) **Joint Preparation**. Each party hereto (i) has participated in the preparation of this Agreement; (ii) has read and understands this Agreement; and (iii) has been represented by counsel of its own choice in the negotiation and preparation of this Agreement. Each party hereto represents that this Agreement is executed voluntarily and should not be construed against any party hereto solely because it drafted all or a portion hereof.

i) **Severability**. Whenever possible, each provision of this Agreement shall be interpreted in such manner to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision in any other jurisdiction, but this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

j) **Waiver**. No waiver by any party hereto, whether express or implied, of its rights under any provision of this Agreement shall constitute a waiver of the party's rights under such provisions at any other time or a waiver of the party's rights under any other provision of this Agreement. No failure by any party hereto to take any action against any breach of this Agreement or default by another party hereto shall constitute a waiver of the former party's right to enforce any provision of this Agreement or to take any action against such breach or default or any subsequent breach or default by the other party hereto. To be effective any waiver must be in writing and signed by the waiving party.

k) **Interpretation**. All section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter as the context requires. Unless the context otherwise requires, the term "including" shall mean "including, without limitation", "including but not limited to", or other words of similar meaning.

l) **No Modification**. No modification of this Agreement will be effective unless made in writing and executed by a duly authorized representative of each party hereto, except as otherwise provided hereunder.

IN WITNESS WHEREOF, the undersigned have caused this Business Associate Agreement to be duly executed and effective as of the Effective Date.

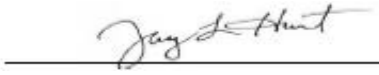
MEMORIAL HERMANN HEALTH SOLUTIONS, INC.	**COVERED ENTITY**
By: 	By: _____
Name: Jay Hurt	Name: _____
Title: Chief Executive Officer	Title: _____

EXHIBIT D

CLAIMS LIABILITY AND RECONCILIATION FOR HYBRID PLAN

1. Plan Sponsor's Liability for Claims Expenses. After the initial Plan Year payment is made (upon execution of this Agreement or upon its renewal), MHHSI shall send an invoice to Plan Sponsor on or before the 25th day of the month, payment of which will be due by the first (1^{st}) day of the following month. The invoice is based on the number of employees and their dependents who are enrolled for coverage as of the fifteenth (15^{th}) day of the month in which the invoice is prepared. The total amount of the invoice will be the sum of the following components:

a. A percent of Premium for Benefits (to be deposited in a Claims Account);
b. A percent of Premium for administrative services (as set forth in Exhibit B of this Agreement);
c. A percent of Premium for Stop-Loss Coverage (as set forth in Exhibit B of this Agreement)

MHHSI shall use the available funds in the Claims Account to pay Benefits as described in Section 5 of this Agreement.

2. **Stop-Loss Coverage Under Stop-Loss Policy.** Once the Benefits amount paid from the Claims Account meets or exceeds the Stop-Loss Threshold, the Stop- Loss Coverage will begin to cover the subsequent costs for such Benefits for the remainder of the Plan Year.

3. **Year-End Reconciliation.** To occur one hundred twenty (120) days after the Plan Year ends. The final surplus is determined as part of this reconciliation.

4. **Plan Sponsor Surplus.** A surplus exists if the total Claims paid during the Plan Year and the run-out period (one hundred twenty (120) days following the end of the Plan Year, for Benefits provided during the Plan Year) are less than the Stop-Loss Threshold that applies to the Plan Sponsor (i.e., $5,000 or 65% of monthly Premium, whichever is greater, calculated on a full-year (twelve (12) month) basis, depending on the group size).

a. Groups with 2 to 9 Employees: If a Plan Sponsor of an employer with 2 to 9 employees who are Covered Persons under the Plan has a surplus upon reconciliation, MHHSI shall issue a refund of five percent (5%) of such surplus to the Plan Sponsor. MHHSI shall issue payment of such amount within sixty (60) calendar days following the reconciliation.

b. Groups with 10 or more Employees: If a Plan Sponsor of an employer with 10 or more employees who are Covered Persons under the Plan has a

surplus upon reconciliation, MHHSI shall issue a refund of fifteen percent (15%) of such surplus to the Plan Sponsor. MHHSI shall issue payment of such amount within sixty (60) calendar days following the reconciliation.

c. If MHHSI has terminated the Agreement for non-payment of premium, any surplus shall first be used to cover any past-due premium, and only the remainder shall be available for distribution to the Plan Sponsor.