BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (this "Agreement") is entered into and agreed to be effective as of the date of Provider's affirmative electronic assent (the "Effective Date"), by and between the Provider on behalf of itself and its subsidiaries and affiliates (collectively and individually, the "Provider", as applicable) and **FAIR MARKET HEALTH LLC** ("Business Associate").

1. **Definitions.** Unless otherwise provided in this Agreement, capitalized terms and phrases that are used herein shall have the same meanings as set forth in 45 C.F.R. Parts 160, 162, and 164 (the "HIPAA Regulations"), implementing the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), which definitions are incorporated into this Agreement by reference.

2. **Permitted Use and Disclosure of PHI.** Business Associate shall only Use or Disclose Protected Health Information ("PHI") received from, or created or received on behalf of, Covered Entity consistent with the "minimum necessary" requirements applicable to covered entities set forth in 45 C.F.R. § 164.514(d) and only:

a) As Required By Law or as permitted or required by this Agreement or Business Associate's services arrangement with Covered Entity (the "Engagement"), but not, pursuant to 45 C.F.R. § 164.502(a)(3), in such a manner that would violate 45 C.F.R. Part 164 if done by Covered Entity;

b) In circumstances in which PHI has been de-identified in accordance with 45 C.F.R. § 164.514(a)-(c);

c) To provide Data Aggregation services related to the Health Care Operations of Covered Entity, to the extent that such services are included within the Engagement; and

d) For the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided the disclosures are Required By Law, or Business Associate obtains reasonable assurances from the Person to whom the information is disclosed that the information will remain confidential and Used or further Disclosed only as Required By Law or for the purposes for which it was disclosed to the Person, and the Person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.

2A. **42 C.F.R. Part 2.** Business Associate acknowledges that, to the extent any information received under this Agreement also constitutes a "record" under 42 C.F.R. Part 2, Business Associate will (i) treat such records consistent with the confidentiality and redisclosure restrictions of Part 2 as aligned with the HIPAA Privacy Rule, (ii) not redisclose such records except as permitted under Part 2 and this Agreement, and (iii) not use or disclose such records to initiate or substantiate any criminal or civil action against a patient, absent patient consent or an authorizing court order.

3. **Obligations and Activities of Business Associate.** Pursuant to 45 C.F.R. §§ 164.504 & 164.314, Business Associate shall:

a) Use appropriate Administrative, Physical, and Technical Safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic PHI, to prevent Use or Disclosure of PHI other than as provided by this Agreement;

b) As soon as reasonably practical, but not later than three (3) business days following discovery thereof, report to Covered Entity any Security Incident or Use or Disclosure of PHI not specifically permitted or required by this Agreement of which Business Associate becomes aware, including any Breach of Unsecured PHI as required by 45 C.F.R. § 164.410, and cooperate with Covered Entity in assessing and mitigating any harmful effects resulting therefrom;

c) In accordance with 45 C.F.R. §§ 164.308(b)(2) & 164.502(e)(1)(ii), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree, pursuant to a written contract, to the same requirements, restrictions, and conditions that apply to Business Associate with respect to such information;

d) Within ten (10) business days following a request from Covered Entity, make PHI in a Designated Record Set available to Covered Entity or, as directed by Covered Entity, to an Individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524;

e) Make any amendments to PHI in a Designated Record Set as directed or agreed to by Covered Entity pursuant to 45 C.F.R. § 164.526 and take any other measures necessary to satisfy Covered Entity's obligations thereunder;

f) Maintain and make available to Covered Entity, within ten (10) business days following a request therefor, the information required to provide an accounting of disclosures necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528;

g) To the extent Business Associate is to carry out one or more of Covered Entity's obligations with respect to the privacy or security of PHI, comply with the applicable HIPAA Regulations in the performance of such obligations; and

h) Pursuant to 45 C.F.R. §§ 160.310(c) & 164.502(a)(4)(i), make its internal practices, books, and records relating to the Use and Disclosure of PHI received from, or created or received on behalf of, Covered Entity available to the Secretary of Health and Human Services.

i) **Artificial Intelligence.** Business Associate shall not Use or Disclose PHI, or permit any Subcontractor to Use or Disclose PHI, to train, fine-tune, validate, or otherwise improve any artificial intelligence or machine learning model, except (i) with PHI that has been de-identified in accordance with 45 C.F.R. § 164.514(a)-(c), or (ii) as otherwise expressly authorized in writing by Covered Entity. Business Associate shall identify to Covered Entity, upon request, any Subcontractor that processes PHI using an artificial intelligence or machine learning tool and shall prohibit its workforce from using PHI in any artificial intelligence tool not covered by a business associate agreement.

4. **Term and Termination.**

a) **Term.** The term of this Agreement shall be effective as of the effective date of the Engagement, or as of the date Business Associate first receives or creates PHI from or on behalf of Covered Entity, whichever occurs first, and, unless sooner terminated as provided herein, shall continue in effect until the termination of the Engagement.

b) **Termination.** Pursuant to 45 C.F.R. § 164.504(e)(2)(iii), Covered Entity may at any time terminate this Agreement if Covered Entity determines, in its sole discretion, that Business Associate has violated a material term of this Agreement or any of its required obligations under the HIPAA Regulations.

c) **Obligations Upon Termination.** Upon the termination of this Agreement for any reason, Business Associate shall return or, if agreed to by Covered Entity, destroy all PHI received from, or created or received on behalf of, Covered Entity that Business Associate (or its agents or Subcontractors) maintains in any form and retain no copies thereof.

d) **Survival.** Section 4.c) shall survive the termination of this Agreement.

5. **Miscellaneous.**

a) **Regulatory References.** Any reference in this Agreement to a section of the HIPAA Regulations means the section as in effect or as amended.

b) **Relationship of Parties.** Business Associate is an independent contractor and not an employee or agent of Covered Entity. The parties agree and acknowledge that Covered Entity does not have control over, nor the authority to direct, the operational activities or conduct of Business Associate.

c) **Construction and Amendment.** The parties agree to amend this Agreement from time to time as is necessary for compliance with the HIPAA Regulations and any other applicable law. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Regulations. In the event one or more of the provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall be unaffected. This Agreement supersedes all

prior agreements and understandings between the parties relating to the subject matter hereof and may only be modified in writing.

d) **Waiver.** A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

e) **Documentation.** Business Associate shall maintain all information and documentation relating to the Engagement and this Agreement for such periods as required by the HIPAA Regulations.

f) **Indemnification.** Business Associate shall indemnify Covered Entity for any and all third-party claims, inquiries, losses, liabilities, costs, and damages, including but not limited to any monetary penalties and reasonable attorneys' fees, that Covered Entity incurs resulting from or arising out of a violation by Business Associate, its agents, or its Subcontractors of the HIPAA Regulations or any material provision contained in this Agreement. Covered Entity shall provide the Business Associate prompt notice (in all events within thirty (30) days) of any such claim, including a copy thereof, served upon it, and shall cooperate fully with the Business Associate and its legal representatives in the investigation of any matter regarding the subject of indemnification. The Business Associate shall have the right to exercise sole control over the defense and settlement of any such complaint or claims for which indemnification or defense is sought, including the sole right to select defense counsel and to direct the defense or settlement of any such claim or suit; provided that the Business Associate shall not enter into any settlement or admit fault or liability on the indemnified party's behalf without the prior written consent of the indemnified party, which consent shall not be unreasonably withheld or delayed. Business Associate's aggregate liability under this Section 5(f) shall not exceed the per-occurrence limit of the insurance maintained under Section 5(g), except with respect to claims arising from Business Associate's gross negligence or willful misconduct, which shall not be subject to this limitation.

g) **Insurance.** Business Associate shall obtain and maintain, at its sole expense, insurance to support its obligations under this Agreement, with coverage limits of not less than $1,000,000 per occurrence, for privacy and security protection and breaches and notification coverage. Such policies shall not be cancelled without prior notice in accordance with policy provisions. Upon request, Business Associate shall provide Covered Entity with a certificate of insurance evidencing such insurance coverage.

h) **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself, its agents, and its Subcontractors available to Covered Entity, at no cost, to testify as witnesses or otherwise in the event of litigation or administrative proceeding against Covered Entity or its directors, officers, or employees based upon a claimed violation of HIPAA or the Health Information Technology for Economic and Clinical Health Act arising out of Business Associate's performance of services to Covered Entity, except in circumstances in which Business Associate is named as an adverse party.

i) **No Third-Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, any rights, remedies, or obligations upon any person other than the parties hereto and their respective successors or assigns.

j) **Notices and Reporting.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed delivered at the time it is hand-delivered or deposited in the U.S. Mail, postage prepaid, certified, or registered mail, return receipt requested, and addressed to the recipient's address as set forth below. Changes to such addresses may be made by written notice as provided in this Section.