



Memorial Hermann Health Plan, Inc.
Memorial Hermann Health Solutions, Inc.
Memorial Hermann Health Insurance Company
Memorial Hermann Commercial Health Plan, Inc.

**Memorial Hermann Health Insurance Company
Memorial Hermann Health Plan, Inc.,
Memorial Hermann Commercial Health Plan, Inc.
And
Memorial Hermann Health Solutions, Inc.
Agency Agreement**

This Agreement is made and is effective _____, 20__ (“Effective Date”) by and between Memorial Hermann Health Insurance Company, Memorial Hermann Health Plan, Inc., Memorial Hermann Commercial Health Plan, Inc., and Memorial Hermann Health Solutions, Inc. (collectively, “Companies”), and _____ (“Agency”), with its principal office at _____. Companies and Agency may be referenced herein individually as a “Party” and collectively as the “Parties.”

Whereas, Companies offers various Insurance products and HMO products for sale to the public; and

Whereas, Agency is duly licensed and authorized to lawfully market and distribute certain of these products, as set forth herein;

Now, therefore, the parties agree as follows:

1. Term:

If executed by both Parties, this Agreement shall be effective beginning on the date shown above, and remain in force until terminated as provided for in Section 11 below.

2. Appointment:

Companies hereby appoint Agency to sell only the products listed in Exhibit 1 (hereinafter “Products”). No exclusive rights are granted to Agency. Agency accepts this appointment as an independent contractor, on the terms herein. This Agreement does not appoint Agency to sell any Medicare Advantage products.

3. Authority and Responsibility of Agency:

- a. Agency shall use best efforts to solicit Applications and/or enrollment forms (collectively, “Applications”) from employer groups in Companies’ service area (generally, “Applicant”), for the health coverage identified in the Commission Schedule, as set forth in Exhibit 2. Agency is only authorized to solicit, and this Agreement only applies to, business lines identified in the Commission Schedule.
- b. Agency will service Companies’ insureds whose Applications are submitted by Agency or who are assigned to Agency by Companies. Such service will include but not be limited to, the following:
 - i. Assisting the insured to take the proper action in connection with any Companies coverage when there is a change of address, change in marital status or change in dependent status.
 - ii. Maintaining a working and current knowledge of Products and the ability to explain

the benefits and or coverages.

- iii. Providing its own employee/agent training, subject to audit by Companies.
- c. Agency agrees to comply with the rules of Companies relating to the completion and submission of Applications, and to make no representation with respect to the benefits of any plan offered by Companies not in conformity with the material prepared and furnished to Agency for that purpose by Companies. Agency shall use best efforts to ensure that each Application is fully and truthfully completed by the Applicant and the completed Application fully and accurately reflects and discloses the circumstances of persons for whom coverage is sought in the Application. Agency further agrees to inform every Applicant that Companies will rely upon the Application information; Companies' subsequent discovery of material facts known to Applicant and either not disclosed or misrepresented may result in the rescission or premium re-rating of any policy entered into by any of the Companies. In no event will the Applicant have any coverage unless and until it is reviewed and approved by Companies and a policy is issued, with respect to which Companies may require a written waiver or a higher premium than was quoted by Agency.
 - d. Agency agrees to maintain such license(s), and to ensure its agents or employees maintain such license(s), as is necessary to transact business on behalf of Companies. Agency further agrees to notify Companies immediately of any expiration, termination, suspension or other action by the Department of Insurance, or any other governmental agency affecting said license(s). By entering into this Agreement, Agency represents that the license(s) of Agency has not previously been subject to suspension, termination or other disciplinary action by any governmental authority. By entering into this Agreement, Agency represents that neither Agency nor its agents or employees has been convicted of a felony or a misdemeanor involving fraud, dishonesty, breach of trust, theft, misappropriation of money, or breach of any fiduciary duty. Agency further agrees to notify Companies in writing immediately upon receiving notice of any misdemeanor or felony charges or any actions including but not limited to convictions by any governmental agency for commission of any act involving fraud, dishonesty, breach of trust, theft, misappropriation of money, or breach of any fiduciary duty.
 - e. Agency agrees to:
 - i. Document each transaction and maintain any other documentation reasonably requested by Companies;
 - ii. Perform in good faith each authorized action hereunder in accordance with Companies' administrative procedures;
 - iii. Obtain and maintain Insurance in force as may be required by law or as requested by Companies in an amount satisfactory to Companies and from a carrier satisfactory to Companies and proof of which will be supplied to Companies upon request. The Insurance required is detailed in Exhibit 3 to this Agreement. The obtaining and maintenance of such coverage shall be a material requirement of this Agreement; and
 - iv. Cooperate with Companies as required to provide service for the Products pursuant to this Agreement.
 - f. No variation of the authority and responsibility granted under this section shall be permitted except with Companies' written consent. No other greater authority shall be implied from the

grant or denial of powers specifically mentioned in this Agreement.

- g. Agency agrees that Companies has the right to discontinue, modify, or exercise all lawful rights in connection with any Products or programs without liability to Agency.

4. Prohibitions:

Agency has no authority to, and shall not:

- a. Make any promise or incur any debt on behalf of Companies;
- b. Hold itself out as an employee of Companies;
- c. Add, alter, waive or discharge any provision(s) of the Products;
- d. Waive any forfeiture, extend the time of making any payments, or alter or substitute the Companies' forms;
- e. Unless permitted by applicable law, pay or allow to be paid to any customer an inducement not specified in the policy for the Products;
- f. Give or offer to give, on Companies' behalf, any advice or opinion regarding the taxation of any customer's income or estate in connection with the purchase of any Product; or
- g. Take any action beyond the scope of the authority granted under this Agreement.

5. Representation and Warranties:

Agency represents and warrants that it and each person or entity to whom it pays commissions will have sound business reputations and backgrounds, will be duly licensed and appointed to represent Companies in compliance with all applicable laws and regulations prior to and during the sale of any Products pursuant to this Agreement, and will comply with Companies' applicable procedures, manuals and regulations, and all applicable laws and regulations. Agency represents and warrants that it has full power and authority to enter into this Agreement and to perform its obligations hereunder.

Further, Agency represents and warrants that neither Agency nor its agents or employees has ever been placed on the United States' federal debarment list, or been debarred from doing business with the federal government.

6. Premiums and Other Monies:

Agency shall be responsible to Companies for all monies received for or on behalf of Companies and will immediately turn over to Companies all such monies received no later than five (5) calendar days from the date of receipt. Agency shall deposit with Companies, together with the Applications, the collected premiums in full on all Applications. Premiums due, subsequent to first regular premiums, shall be payable directly to Companies at its home office. Funds received by Agency for or on behalf of Companies shall be received and held by Agency in a fiduciary capacity, shall be separately accounted for to Companies, shall not be commingled by Agency with personal funds of Agency or other business accounts managed/owned by Agency, including premium accounts maintained by Agency for other companies (unless permitted under applicable law).

7. Commissions:

- a. Companies shall pay Agency commissions, set forth in Exhibit 2, for each premium

payment received and accepted by Companies on a policy issued pursuant to an Application submitted by the Agency under this Agreement. Agency shall not be entitled to any other compensation, remuneration or benefits of any nature from Companies for services rendered other than set forth in Exhibit 2.

- b. If Companies returns the premium on a policy or portion of such premium for any reason or if a policy terminates or is canceled for any reason, Agency shall repay Companies on demand the amount of all unearned commission received by Agency on account of such cancellation or termination. Agency shall be liable to Companies for any unearned commissions paid to Agency for returned premiums on canceled, surrendered or terminated policies.
- c. Agency agrees that to the extent of any indebtedness of Agency to Companies, Companies shall have all rights to recover said indebtedness. Further, Companies may at any time offset any commissions, fees or bonuses accrued or to accrue to Agency against any debt or debts due Companies from Agency.
- d. The commissions payable to Agency, set forth in Exhibit 2, shall be payable during the term of this Agreement and after its termination, provided the policies on which such commissions are payable remain in force. No further commissions shall be payable to Agency should Companies terminate this Agreement for cause under section 11.
- e. This section shall survive termination of this Agreement.

8. Policyholder Authorization:

No commissions shall be payable for a policy issued if the Agency does not have the policyholder's permission to serve its interests.

9. Approval of Advertising:

Agency must obtain Companies' prior written approval of the form and content of any proposed advertising, promotional material, circular, marketing or any material in any media or in any form containing references to the name(s), logo(s), trademark(s), or product(s) of Companies of its affiliates prior to the distribution or use of such material in any manner whatsoever. Agency shall hold harmless and indemnify Companies in the event of suit or regulatory action brought as a result of the dissemination or publication of any such material not so approved.

10. Confidentiality and Protected Health Information:

- a. Agency and Companies each agree that all information communicated to it by the other, whether before the effective date or during the term of this Agreement, shall be received in strict confidence, shall be used only for the purposes of this Agreement and that no such information shall be disclosed by the recipient party, its agents or employees without the prior written consent of the other party. Each party hereto agrees to take all reasonable precautions to prevent the disclosure to outside parties of such information including, without limitation, the terms of this Agreement. Upon the termination of this Agreement, or sooner if requested by Companies, Agency will immediately deliver to Companies any and all information communicated to it, compiled or coming into Agency's knowledge, possession, custody or control in connection with his activities as a sales

agent or sales representative of Companies, as well as all machines, parts, equipment and other materials received by Agency from Companies or from any of its customers, agents or suppliers in connection with such activities.

- b. Agency also acknowledges that the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 ("HIPAA"), and the Health Information Technology for Economic and Clinical Health Act set forth in Title XIII of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 ("HITECH Act"), apply to any protected health information that Agency may receive from Companies pursuant to this Agreement. Agency further acknowledges that it will be acting as a business associate of Companies with respect to such information and shall execute a Business Associate Agreement contemporaneously with this Agreement, a copy of which is attached to this Agreement at Exhibit 4.

11. Termination:

- a. Agency's appointment and this Agreement may be terminated by Companies without cause upon thirty (30) days' written notice. This Agreement shall terminate immediately upon the date of the Agency's bankruptcy, or insolvency, or, in the event the Agency is a corporation or partnership, upon the dissolution thereof, or upon the termination or nonrenewal of the Agency's license to represent Companies. Without notice this Agreement shall immediately terminate for cause if the Agency:
 - i. Fails to comply with or commits any material violation of any provision of this Agreement or any other agreement with Companies, provided that Agency will be allowed five (5) business days in which to cure the breach before such termination is effective;
 - ii. Suffers some other financial impairment which may affect Agency's performance of this Agreement;
 - iii. Through its employees or representatives, commits any act of fraud or malfeasance, violates any law or regulation regarding the sale of Companies' products or fails to comply with any court or administrative agency order;
 - iv. Induces or attempts to induce (as those terms are used in Title 28 Texas Administrative Code Chapter 21, dealing with Agents and Brokers) any insured of Companies to surrender or lapse any policy with Companies or to reduce or discontinue any premium payments to it; provided Agency will be allowed two (2) business days to cure such activity before termination is effective;
 - v. Withholds, converts, or fails to account for and remit promptly any monies, funds, policies, or other property belonging to or returnable to Companies;
 - vi. Induces or attempts to induce any agent, employee or representative of Companies to terminate his/her relationship with Companies; provided Agency will be allowed two (2) business days to cure such activity before termination is effective;
 - vii. Commits any act injurious to Companies or its policyholders, including, but not limited to bad faith acts such as poor field underwriting;

- viii. Threatens or acts in an abusive manner toward Companies or any of its employees;
 - ix. Forfeits its license to write insurance in any State by reason of action commenced against the General Agency by the Insurance Department of that State, whether as part of a revocation of such license or in an effort to compromise or settle such proceedings;
 - x. Fails to notify Companies of any change in address within six (6) months of the change; or
 - xi. Purports to act, or represents that it is entitled to act in any way on behalf of Companies without authority of Companies.
- b. If this Agreement is terminated for cause as provided in this section or if this Agreement is terminated without cause but Companies later discovers that during the Agency's association with Companies or afterwards that the Agency has committed any of the acts described in this section then the Agency shall forfeit to Companies all right, title and interest in any compensation due the Agency under this Agreement. The right of Companies to declare a complete forfeiture of any and all compensation and/or to terminate this Agreement for cause, as provided herein, shall not be construed to preclude Companies' seeking and obtaining injunctive relief or pursuing other remedies available to Companies, by law or in equity, for such breach or threatened breach, including, but not limited to, recovery of damages. A failure to terminate this Agreement for cause shall not be a waiver of the right to do so with respect to any future default.
- c. This section shall survive termination of this Agreement.

12. Effect of Termination:

- a. Upon termination of this Agreement, Agency agrees to immediately cease the distribution and use of all advertising materials and campaigns, sales literature, consumer-oriented information, solicitation letters, and any and all promotional materials or correspondence regarding Companies' Products in any media or in any form that bears the name, logo or other identifying material of Companies. Agency shall immediately pay all sums due Companies, including, but not limited to, unearned commissions due Companies under section 7, and deliver to Companies or its representative all records relating to the business produced under this Agreement. Failure to return Companies' property may result in a charge against the Agency for the cost of such items to Companies.
- b. Agency understands that it has no rights under this section as to any business assigned to another agent.

13. Records and Accounts:

Agency shall hold and preserve as property of Companies including all books of account, documents, receipts, vouchers, files, certificates, literature, policies, Applications, policyholder lists, correspondence and records of any kind which at any time come into Agency's possession or under its control relating to transactions for or by Companies. During the term of this Agreement, upon request of Companies and at Companies' expense, Agency shall open these records to examination by Companies upon reasonable notice to Agency. Upon termination of this Agreement, Agency shall surrender the original records, together with any other property of Companies in its possession to Companies; provided, however, that Agency may maintain copies of such documents to the extent required under applicable law and those copies will remain subject to the terms of this Agreement,

including but not limited to the Confidentiality provisions.

14. Authority and Responsibility of Companies:

- a. Companies will pay Agency first year and renewal commissions, as set forth in Exhibit 2, on the policies issued by Companies and produced by Agency and in the case of group business for which Agency has been designated "Agency of Record" in writing by the employer of the group on group business the Agency has produced and issued by Companies. Furthermore, Companies reserves the right, in its sole and absolute discretion, to refuse to recognize any change in "Agency of Record" designation by a group that has coverage with Companies through an association that has an arrangement with Companies.
- b. If Agency submits an Application for a group with prior Companies coverage no commission shall be payable unless prior coverage has been lapsed for a period of at least six (6) months in the case of group coverage; and in such event renewal commissions only shall be payable.
- c. Companies may modify or replace the Commission Schedule set forth in Exhibit 2 on thirty (30) days prior written notice to Agency, and such modified or replacement schedule shall apply to all policies issued or renewed on or after the effective date of such modification or replacement.
- d. Companies will pay to Agency compensation due within thirty (30) days following the end of each calendar month based on premiums actually received and reconciled by Companies. However, Companies reserves the right to accumulate commissions until commissions due equal at least twenty-five dollars. If a return premium charge is due on Agency-generated business, Companies will charge back to Agency the amount of commission previously paid to Agency on the amount of returned premium charge.

15. Miscellaneous Provisions:

- a. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without giving effect to any conflict of law rule or provision thereof that would cause the application of the laws of any other jurisdiction. Consent is given to the jurisdiction of the state and federal courts located in, or having jurisdiction over, Harris County, Texas, U.S.A. for any action or proceeding relating to this Agreement.
- b. This Agreement together with the Exhibits attached contains the entire understanding and agreement between the parties hereto with respect to the sale and distribution of the Products and terminates and supersedes all prior and/or contemporaneous agreements. In executing this Agreement, Agency and Companies hereby agree that they have not relied upon any representations other than the representations expressly contained within this Agreement. This Agreement and its terms may not be waived, amended, modified, supplemented or changed, in any respect whatsoever, except by a written agreement signed by a senior officer of both parties.
- c. Without in any way limiting Section 15(d), this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and, except to the extent prohibited hereunder, assigns.

- d. This Agreement is not transferable or assignable by the Agency. No rights or interests arising there from shall be subject to assignment except with the written consent of Companies.
- e. Companies reserve the unconditional right to refuse to accept Applications procured by Agency if such do not meet the underwriting or other standards of Companies. Furthermore, Companies reserves the unconditional right to modify, to the extent permitted by law, any of the Products in any respect whatsoever or suspend the sale of any of the Products, in whole or in part, at any time without prior notice.
- f. Agency shall indemnify, defend and hold Companies and its directors, officers, employees, affiliates, and agents, harmless from and against any claim, judgment, demand, action, causes of action or loss or expense (including reasonable attorneys' fees and related court costs) for damage or loss proximately caused by the dishonesty, willful misconduct or negligence of Agency or its representatives in carrying out its duties and obligations under the terms of this Agreement or failure to comply with applicable law.

Companies shall indemnify, defend and hold Agency and its directors, officers, affiliates, and employees harmless from and against any claim, judgment, demand, action, causes of action or loss or expense (including reasonable attorneys' fees and related court costs) for damage or loss proximately caused by the material breach by Companies of this Agreement.

- g. Failure of Companies to enforce or insist upon the provisions of this Agreement in any instance(s) shall not be construed as waiver or relinquishment of its right to enforce or insist upon such provision(s) either currently or in the future.
- h. Any notice required under this Agreement may be delivered in person or by mail to Agency at its last known address. Any notice to Companies shall be delivered in person or by mail to 929 Gessner, Suite 1500, Houston, Texas 77024. Notice shall be deemed delivered upon deposit in the U.S. mail, or if delivered in person, upon actual receipt.
- i. The only relationship between Companies and Agency is that of an independent contractor, which is the intent of the parties hereto and which is established by this Agreement. Nothing in this Agreement shall be construed to create the relationship of employer and employee or the relationship of principal and agent between Companies and Agency, nor shall either party hold themselves out to any third party as having such a relationship. Agency, as an independent contractor, shall have no claim to compensation except as provided in this Agreement and shall not be entitled to reimbursement from Companies for any expenses incurred in performing this Agreement.
- j. Companies shall not, by entering into and performing this Agreement, be or become liable for any existing or future obligations, liabilities or debts of Agency, and Agency by entering into and performing this Agreement, shall not be or become liable for any existing or future obligations, liabilities or debts of Companies.
- k. Performance by a party of any obligation hereunder shall be excused if such failure to perform is caused by any event, contingency or circumstance beyond the reasonable control of such party, which prevents, hinders or makes impracticable the performance

of services under this Agreement, provided prompt notice thereof is given to the other party. Such delays, breakdowns, or interruptions in services may include, but are not limited to, acts of God or a public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, death of key employees, strikes or other labor difficulties, degradation of telephone or other communication services, or loss of use of electronic data processing equipment howsoever caused. If any party fails to perform any obligation hereunder as a result of an event or circumstances beyond its control, it shall meet such obligation within a reasonable time after the cause of such failure has been removed and the other party hereto shall be obligated to accept such deferred performance. Obligations of the other party, the performance of which are dependent upon the performance of the party whose performance was delayed, shall not be considered as performed late to the extent such late performance is caused by the delayed party's performance hereunder.

- I. In the event that any section, paragraph, subparagraph or provision of this Agreement shall be determined to be contrary to governing law or otherwise unenforceable, all remaining portions of this Agreement shall be enforced to the maximum extent permitted by law. The unenforceable section, paragraph, subparagraph or provision shall first be construed or interpreted, if possible, to render it enforceable. If that is not possible, then the provision shall be severed and disregarded, and the remainder of this Agreement shall be enforced to the maximum extent permitted by law.
- m. Neither party shall delegate or subcontract any of its duties and obligations under this Agreement without the express prior written consent of the other party.
- n. All taxes or other governmental obligations required of or imposed on Agency pursuant to this Agreement shall be the sole obligation of Agency.
- o. Agency represents and warrants that it has or will obtain prior to the effective date of this Agreement, and during the Term shall maintain in full force and effect and for any period of time required thereafter to comply with future claims relating to this Agreement, all of the insurance set forth on Exhibit 3 attached hereto. Within ten (10) business days of the effective date of this Agreement, and thereafter upon request, Agency shall promptly deliver to Companies certificates of insurance evidencing such coverage as required.
- p. The following shall have the same legal force and effect as an original of this document: a facsimile, photocopy, imaged, or other electronic version.

[SIGNATURE PAGE FOLLOWS]

By signing below, the persons affirm that they have been duly appointed by their respective Party to enter into this Agreement on behalf of such Party.

Agency

Signature: _____

Name: _____

Title: _____

Date: _____

- Memorial Hermann Health Insurance Company**
- Memorial Hermann Health Plan, Inc.**
- Memorial Hermann Commercial Health Plan, Inc.**
- Memorial Hermann Health Solutions, Inc.**

Signature: _____

Name: _____

Title: _____

Date: _____

EXHIBIT 1

1. Products:

Health insurance products underwritten and approved for sale by Memorial Hermann Health Insurance Company including small and large group health plans; and health maintenance organization products underwritten and approved for sale by Memorial Hermann Health Plan, Inc. and Memorial Hermann Commercial Health Plan, Inc., including small and large group health plans; and hybrid health insurance products administered and approved for sale by Memorial Hermann Health Solutions, Inc.

2. Commissions:

Commissions payable are based on the written agreement between Companies and the Agency for each policy in force serviced by the Agency during the period such agreement remains in force.

3. Services:

The Agency shall perform these services:

- a. Quoting and Sales presentation
- b. Enrollment
- c. Customer Service
- d. Renewal and Related Services

EXHIBIT 2
MEMORIAL HERMANN HEALTH INSURANCE COMPANY
MEMORIAL HERMANN HEALTH PLAN, INC.
MEMORIAL HERMANN COMMERCIAL HEALTH PLAN, INC.
MEMORIAL HERMANN HEALTH SOLUTIONS, INC.

AGENCY COMMISSION SCHEDULE

EFFECTIVE JANUARY 1, 2019

Commissions shall be paid as follows, unless otherwise negotiated:

Policy Type	Commission (First Year)	Renewals
Small and Large Group MHHIC Health Plans	6.0%	6.0%
Small and Large Group MHHP/MHCHP Health Plans	6.0%	6.0%
Hybrid Plans	6.0%	6.0%

These commissions are subject to all the terms and conditions of the Agency Agreement.

I accept the above commission schedule:

Signed this _____ day of _____, 20__

Print Name _____

Signature _____

EXHIBIT 3

INSURANCE REQUIREMENTS ADDENDUM

Without limiting any of the obligations or liabilities of Agency, Agency shall carry and maintain, at its own expense including any applicable deductibles or retentions, as long as respective, applicable statute(s) of limitation or repose are in effect relating to the specific purposes of this Agreement, insurance policies of the kind and limits listed below and with insurers with an A.M. Best's Rating of not less than A-VIII at all times. Accordingly, Agency will maintain the following insurance requirements:

- a. **Commercial General Liability** with minimum limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate for such length of time as necessary to cover any and all claims arising out of or relating to the work performed herein.
- b. **Excess or Umbrella Liability** with minimum limits of \$2,000,000 each occurrence and \$2,000,000 annual aggregate in excess coverage. Total limits required may be satisfied with any combination of primary and excess coverage.
- c. **Errors and Omissions/Professional Liability** with minimum limits of \$2,000,000 for each claim and \$2,000,000 annual aggregate covering claims involving any professional services provided by Agency.

Where allowed by law, Companies and its subsidiaries, officers, directors, trustees, employees, agents and affiliated companies (all of the foregoing, collectively, the "Additional Insureds") shall be named as additional Insureds on policies a. and b. above with a waiver of subrogation clause in favor of the Additional Insureds on policies a. and b. above. Additionally, in respects only to Agency's Indemnification obligations herein, all of Agency's insurance shall be primary and any other valid and collectible insurance or self-insurance maintained by or in the name of Companies (or any other Additional Insureds for their own account) and Additional Insureds' insurance and self-insurance shall be excess of Agency's insurance and shall not contribute to it in any way. Such insurance coverages (a. - c.) described above shall cover the actions of all Agency's employees, contractors and subcontractors ("Personnel") performing services in relation to this Agreement.

If any of Agency's insurance policies referenced above are claims made coverage, and if any of Agency's policies are cancelled, non-renewed, or, if Agency's operation is sold or ceases to exist, Agency shall procure at Agency's sole expense continuance of coverage with an extended reporting period with the same above requirements which specifically continue to provide benefit for Additional Insureds for as long as respective, applicable statute(s) of limitation or repose are in effect relating to the specific purpose of this Agreement. It is Agency's sole responsibility to ensure that the insurance requirements listed above are in effect for the full term of this Agreement and for any period of time required thereafter to provide continuance of coverage needed to address potential claims that may arise. Cancellation of coverage or failure to maintain required coverage without Companies' written approval shall be considered a breach of this Agreement.

In addition, Agency hereby covenants and agrees that it will require its independent contractors, providing any services in this Agreement, through any kind of independent contractor agreements

between Agency and each independent contractor, to have the same types of coverage, coverage requirements, and limits as Agency above (a. through c.) provide the same waivers of subrogation and additional insured status, and hold the Additional Insureds harmless from any and all claims, losses, damages, or injuries suffered by such independent contractor(s) while performing the services under this Agreement.

Within 120 days after the effective date of this Agreement, Agency will provide only the actual policy language applying to blanket wording provisions and/or applicable endorsements for insurance coverages described above naming Additional Insureds as such and providing waivers of subrogation as required above along with required certificate(s) of insurance. All such insurance shall be kept current throughout the entire term of this Agreement, and shall provide for at least thirty (30) days' advance notice to Companies if coverage is to be non-renewed, cancelled or materially modified in some way so as to not provide the same minimum coverages or limits of insurance as cited in above requirements. Within ten (10) business days of the execution of this Agreement, and at the renewal of each of the above required insurance coverages, Agency shall provide certificates of insurance evidencing full compliance with the insurance requirements contained herein to the following address (certificate holder):

ATTN: Insurance Services & Enterprise Risk Management, Memorial Hermann Health System, Memorial Hermann Tower, 929 Gessner, Suite 2575, Houston, Texas 77024.

Office: (713) 242-4432, inscerts@memorialhermann.org

EXHIBIT 4

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this "Agreement") is effective as of _____, 20__ (the "Effective Date") by and between _____ ("Business Associate") and Memorial Hermann Health Insurance Company, Memorial Hermann Health Plan, Inc., and Memorial Hermann Commercial Health Plan, Inc. (collectively, "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 Agreement(s)").

B. Covered Entity and Business Associate desire to enter into this Agreement to reflect their mutual understanding of the use and disclosure of Covered Entity's Protected Health Information by Business Associate in connection with the Services Agreement, 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 to perform services under the Services Agreement(s) or as may be requested by Covered Entity from time to time, provided that such use would not violate the Privacy Rule if done by Covered Entity. Business Associate may use Protected Health Information as necessary for the proper management and administration of Business Associate or to carry out legal responsibilities of 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 the Services Agreement(s), this Agreement, as Required by Law, or to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.5020(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. § 164.5020(1), Business Associate shall provide Covered Entity with

written notification of such requested disclosure within five (5) 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. Business Associate may also disclose Protected Health Information received from Covered Entity for the proper management and administration of Business Associate or to carry out legal responsibilities of Business Associate, provided: (i) the disclosure is Required by Law; or (ii) Business Associate obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the Protected Health Information, and the person notifies Business Associate of any instance of which it is aware in which the confidentiality of the Protected Health Information has been breached.

c) **Obligations of Business Associate.** Except as expressly set forth in this Agreement, as necessary to provide the services under the Services Agreement(s), 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 the Services Agreement(s).

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 Agreement(s), 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 discloses Covered Entity's Protected Health Information, to provide reasonable assurance, evidenced by written contract, that such Subcontractor or agent will comply with substantially 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 substantially the same 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 for inspection and obtaining copies of, Covered Entity's Protected Health Information about the Individual that is in Business Associate's custody or control and in a Designated Record Set, 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 maintained by Business Associate in a Designated Record Set, 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 within five (5) business days. Business Associate will make the report to Covered Entity's Privacy Officer not more than thirty (30) days 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 rights of Business Associate to use and disclose any of Covered Entity's Protected Health Information as set forth herein shall terminate upon termination or other conclusion 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.

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.

A. 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

_____ (TO BE INITIALED BY THE PARTIES)

B. 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.

_____ (TO BE INITIALED BY THE PARTIES)

C. 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, WITHIN THREE (3) BUSINESS DAYS OF RECEIPT. ("INDEMNITOR"). 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 anytime 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 two (2) 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 Business Associate:

If to Covered Entity:

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.

I. 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.

[SIGNATURE PAGE FOLLOWS]

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

Business Associate

By: _____

Name: _____

Title: _____

Covered Entity

Memorial Hermann Health Solutions, Inc.

By: _____

Name: Jamie Reynoso _____

Title: _____

Covered Entity

Memorial Hermann Health Insurance Company

By: _____

Name: Jamie Reynoso _____

Title: _____

Covered Entity

Memorial Hermann Health Plan, Inc.

By: _____

Name: Jamie Reynoso _____

Title: _____

Covered Entity

Memorial Hermann Commercial Health Plan, Inc.

By: _____

Name: Jamie Reynoso _____

Title: _____

