

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.

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 (1st) 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 (15th) 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.