



## Subscription Service Agreement

This Subscription Service Agreement (this "**Agreement**"), effective as of the date of the last signature (the "**Effective Date**"), is by and between Bamboo Health, Inc., a Delaware corporation with offices located at 9901 Linn Station Road, Suite 500, Louisville, Kentucky 40223 ("**OpenBeds**" or "**Provider**") and Chatham County, by and through its Department of Social Services, a body politic and corporate of the State of North Carolina with offices located at 12 East Street, Pittsboro, North Carolina 27312 ("**Customer**"). This Agreement shall govern Customer's access and use of the Service at the locations listed herein on Schedule 1. Provider and Customer may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

WHEREAS, Provider is operating the Service (as defined below) on behalf of the North Carolina Department of Health and Human Services; and

WHEREAS, Provider provides access to the Service to its customers; and

WHEREAS, Customer desires to access the Service, and Provider desires to provide Customer access to the Service, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 1. Definitions.

(a) "**Aggregated Statistics**" means data and information related to Customer's use of the Service, including de-identified PHI, which is used by Provider in an aggregate manner, to include, compiling statistical and performance information related to the provision and operation of the Service. In no event will Aggregated Statistics include protected health information, as defined in 45 CFR 160.103 ("PHI") or personally identifying information, as defined in N.C.G.S. 14-113.20(b) ("PII").

(b) "**Authorized User**" means Customer's employees, consultants, contractors, and agents who are authorized by Customer to access and use the Service under the rights granted to Customer pursuant to this Agreement and/or supplemental agreements with a Governmental Authority-owned network residing on the North Carolina OpenBeds Platform .

(c) "**Customer Data**" means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Service.

(d) "**Documentation**" means Provider's user manuals, handbooks, and guides relating to the Service provided by Provider through the North Carolina OpenBeds Platform to Customer either electronically or in hard copy form.

(e) "**Governmental Authority**" means (i) any federal, state, local, or foreign government, and any political subdivision of any of the foregoing, (ii) any agency or instrumentality of any such government or political subdivision, (iii) any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that its rules,

regulations, or orders have the force of law), and (iv) any arbitrator, court or tribunal of competent jurisdiction.

(f) "**Network Administrator**" means the North Carolina Department of Health and Human Services which has entered into a contract with the Provider in order to create a Referral Network.

(g) "**North Carolina OpenBeds Platform**" means the SaaS platform that identifies, unifies, and tracks all behavioral health treatment inpatient beds, outpatient programs, and social resources to create a single, common network of treatment providers and referring entities in North Carolina that is developed, operated and maintained by Provider on behalf of the Governmental Authority and consistent with the specifications and requirements established by the Governmental Authority.

(h) "**Provider IP**" means the Service, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Provider IP includes Aggregated Statistics and any information, data, or other content derived from Provider's monitoring of Customer's access to or use of the Service, but does not include Customer Data.

(i) "**Referral Network**" means the entire collection of Provider's customers who use a common instance of the Service in a specific manner defined by the contract with the Network Administrator.

(j) "**Service**" means the software-as-a-service offering of the North Carolina OpenBeds Platform, which Provider is operating and supporting on behalf of the North Carolina Department of Health and Human Services, as described in **Exhibit A**.

## 2. Access and Use.

(a) Provision of Access. Subject to the terms and conditions of this Agreement, Provider hereby grants Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 13(h)) right to access and use the Service during the Term, solely for use by Authorized Users and authorized agencies in accordance with the terms and conditions herein. Such use is limited to Customer's internal use. Provider shall provide to Customer the necessary passwords and network links or connections to allow Customer to access the Service.

(b) Documentation License. Subject to the terms and conditions contained in this Agreement, Provider hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 13(h)) license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Service.

(c) Use Restrictions. Customer shall not use the Service for any purposes beyond the scope of the access granted in this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Service or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Service or Documentation; (iii) reverse engineer,

disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Service, in whole or in part; (iv) remove any proprietary notices from the Service or Documentation; or (v) use the Service or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

(d) Reservation of Rights. Provider reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Provider IP.

(e) Suspension. Notwithstanding anything to the contrary in this Agreement, Provider may temporarily suspend Customer's and any Authorized End User's access to any portion or all of the Service if: (i) Provider reasonably determines that (A) there is a threat or attack on any of the Provider IP; (B) Customer's or any Authorized End User's use of the Provider IP disrupts or poses a security risk to the Provider IP or to any other customer or vendor of Provider; (C) Customer, or any Authorized End User, is using the Provider IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or Provider's provision of the Service to Customer or any Authorized End User is prohibited by applicable law; or (ii) any vendor of Provider has suspended or terminated Provider's access to or use of any third-party service or products required to enable Customer to access the Service (any such suspension described in subclause (i) or (ii), a "**Service Suspension**"). Provider shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Service following any Service Suspension. Provider shall use commercially reasonable efforts to resume providing access to the Service as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Provider will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

(f) Aggregated Statistics and Use of Data.

(i) Provider is firmly committed to improve healthcare access and delivery through the use of its technology and continuous process improvement and, therefore, may periodically collect, use and process Aggregated Statistics from Customer and other network members. Provider may compile statistical information related to the performance of the Service for purposes of improving the Service.

(ii) Notwithstanding anything to the contrary in this Agreement, Provider may monitor Customer's use of the Service and collect and compile Aggregated Statistics. As between Provider and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Provider. Customer acknowledges that Provider may compile Aggregated Statistics based on Customer Data input into the Service. Customer agrees that Provider may (a) make Aggregated Statistics available to the Network Administrator (in report form) in compliance with its contractual obligations to Network

Administrator, and (b) use Aggregated Statistics to the extent and in the manner permitted under applicable law.

(iii) For the avoidance of doubt, nothing in this Section 2(f) shall permit Provider to use or disclose PHI or PII in any manner that is not explicitly permitted under this Agreement or the BAA (as defined below).

(g) Data and Analytics. Upon Customer's request and mutually agreed upon payment terms, on a case by case basis, Provider shall deliver to Customer any data or analytics beyond the services included within the North Carolina OpenBeds Platform that relates to Customer's services and operations in a format the parties shall mutually agree upon in writing pursuant to a separate contract, statement of work, or contract addendum between Provider and Customer.

### 3. Customer Responsibilities.

(a) General. Customer is responsible and liable for all uses of the Service and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Service and shall cause Authorized Users to comply with such provisions.

(b) Hardware Obligations. Customer shall be responsible for obtaining and maintaining all computer hardware, software, and communications equipment needed to access the Service. Any hardware or devices in use must meet the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**") requirements as agreed to in the Business Associate Agreement ("**BAA**") which is attached to and incorporated into this Agreement as **Exhibit C**.

(c) Anti-Virus Obligations. Customer shall be responsible for implementing, maintaining, and updating all necessary processes and procedures and software for safeguarding against computer infection, viruses, worms, Trojan horses, and other code that manifest contaminating or destructive properties.

(d) Customer Use of Service. Customer shall abide by all Governmental Authority laws and regulations applicable to its use of the Service, use the Service only for permitted purposes under this Agreement, and comply with all regulations, policies and procedures of networks connected to the Service supported by the North Carolina OpenBeds Platform.

(e) Restricted Uses. Customer will not knowingly, explicitly or implicitly, upload or distribute any files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of the Service, modify, disassemble, decompile or reverse engineer the Service, probe, scan, test the vulnerability of, or circumvent any security mechanisms used by the sites, servers, or networks connected to Service, take any action that imposes an unreasonably or disproportionately large load of the sites, servers, or networks connected to the Service, copy or reproduce the Service, access or use any other clients' or their users' data through the Service, maliciously reduce or impair the accessibility of the Service, use the service to post,

promote, or transmit any unlawful, harassing, libelous, abusive, threatening, harmful, hateful, or otherwise objectionable material, or transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability.

4. Service Levels and Support. The access rights granted hereunder entitles Customer to the service levels and support described on **Exhibit A and Exhibit B**.

5. Fees and Payment. **Not Applicable**

6. Confidential Information. From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or, at the disclosing Party's request or permission, destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five (5) years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

7. Intellectual Property Ownership; Feedback.

(a) Provider IP. Customer acknowledges that, as between Customer and Provider, Provider owns all right, title, and interest, including all intellectual property rights, in and to the Provider IP.

(b) Customer Data. Provider acknowledges that, as between Provider and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Provider a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Provider to provide the Service to Customer.

(c) Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to Provider by mail, email, telephone, or otherwise, suggesting or recommending changes to the Provider IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Provider is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Provider on Customer's behalf, and on behalf of its

employees, contractors and/or agents, all right, title, and interest in, and Provider is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Provider is not required to use any Feedback.

8. Limited Warranty and Warranty Disclaimer.

(a) Provider warrants that the Service will conform in all material respects to the service levels set forth in **Exhibit A and Exhibit B** when accessed and used in accordance with the Documentation. Provider does not make any representations or guarantees regarding uptime or availability of the Service unless specifically identified in **Exhibit A or Exhibit B**. The remedies set forth in **Exhibit B** are Customer's sole remedies and Provider's sole liability under the limited warranty set forth in this Section 8(a).

(b) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), THE PROVIDER IP IS PROVIDED "AS IS" AND PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE PROVIDER IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICE, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

9. Indemnification.

(a) Provider Indemnification.

(i) Provider shall indemnify, defend, and hold harmless Customer and Network Administrator from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Service, or any use of the Service in accordance with this Agreement, infringes or misappropriates such third party's US patents, copyrights, or trade secrets, provided that Customer promptly notifies Provider in writing of the claim, cooperates with Provider, and allows Provider sole authority to control the defense and settlement of such claim.

(ii) If such a claim is made or appears possible, Customer agrees to permit Provider, at Provider's sole discretion, to (A) modify or replace the Service, or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. If Provider determines that neither alternative is reasonably available, Provider may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer.

(iii) This Section 9(a) will not apply to the extent that the alleged infringement arises from: (A) use of the Service in combination with data, software, hardware, equipment, or technology not provided by Provider or authorized by Provider in writing; (B) modifications to the Service not made by Provider; or (C) Customer Data.

(b) Customer Indemnification. Customer shall indemnify, hold harmless, and, at Provider's and/or Network Administrator's option, defend Provider and Network Administrator from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights and any Third-Party Claims based on Customer's or any Authorized User's (i) negligence or willful misconduct; (ii) use of the Service in a manner not authorized by this Agreement; (iii) use of the Service in combination with data, software, hardware, equipment or technology not provided by Provider or authorized by Provider in writing; or (iv) modifications to the Service not made by Provider, provided that Customer may not settle any Third-Party Claim against Provider unless Provider consents to such settlement, and further provided that Provider will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

(c) Sole Remedy. THIS SECTION 9 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICE INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. IN NO EVENT WILL PROVIDER'S LIABILITY UNDER THIS SECTION 9 EXCEED THREE MILLION U.S. DOLLARS (\$3,000,000).

10. Limitations of Liability. IN NO EVENT WILL PROVIDER BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICE, IN EACH CASE REGARDLESS OF WHETHER PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED FIVE (5) TIMES THE TOTAL AMOUNTS PAID AND AMOUNTS ACCRUED BUT NOT YET PAID TO PROVIDER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR THREE MILLION U.S. DOLLARS (\$3,000,000), WHICHEVER IS LESS.

#### 11. Term and Termination.

(a) Term. The initial term of this Agreement begins on the Effective Date and, unless terminated earlier pursuant to this Agreement's express provisions, will continue in effect until one (1)



year from such date (the "**Initial Term**"). This Agreement will automatically renew for successive one (1) year terms unless earlier terminated pursuant to this Agreement's express provisions or either Party gives the other Party written notice of non-renewal at least ninety (90) days prior to the expiration of the then-current term (each a "**Renewal Term**" and together with the Initial Term, the "**Term**").

(b) Termination. In addition to any other express termination right set forth in this Agreement:

(i) Provider may terminate this Agreement, effective on written notice to Customer, if Customer breaches any of its obligations under Section 2(c) or Section 6;

(ii) Either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach; or

(iii) Either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: ((A) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (B) makes or seeks to make a general assignment for the benefit of its creditors; or (C) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(c) Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Provider IP and, without limiting Customer's obligations under Section 6, Customer shall delete, destroy, or return all copies of the Provider IP and certify in writing to the Provider that the Provider IP has been deleted or destroyed.

(d) Survival. This Section 11(d) and Sections 1, 5, 6, 7, 8(b), 9, 10, 12 and 13 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

## 12. Dispute Resolution.

(a) Except for actions for injunctive relief, which may be brought at any time, any claim, controversy or dispute concerning questions of fact or law arising out of or relating to this Agreement, or to the performance by either Party, or to the threatened, alleged, or actual breach thereof by either Party, which is not disposed of by mutual agreement within a period of thirty (30) days after one Party has provided written notice of the dispute to the other, shall be escalated to the executive level of the respective companies. If this review process is not successful within thirty (30) days, unless mutually extended by the Parties, then the claim, controversy or dispute shall be submitted to arbitration.

(b) The claim, controversy or dispute shall be arbitrated before three arbitrators, one to be selected by each Party and the third to be selected by the other two selected arbitrators. Any such arbitration shall be held in Louisville, Kentucky, and the arbitrators shall apply the substantive

law of the Commonwealth of Kentucky. Arbitration may be conducted in accordance with the standard rules of the AAA Commercial Arbitration except Arbitrators may not make any award not strictly in conformance with this Agreement. The decision of the arbitrators shall be final and conclusive upon the Parties and may be entered in any court of competent jurisdiction within Kentucky.

13. Miscellaneous.

(a) Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, Exhibit C; (ii) second, this Agreement, excluding its Exhibits (except for Exhibit C); (iii) third, the Exhibit A and Exhibit B to this Agreement as of the Effective Date; and (iv) fourth, any other documents incorporated herein by reference.

(b) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

(c) Publicity. Customer agrees that Provider may include Customer's trademarks, name, and logos in its customer lists, press releases, marketing materials, and on its website. Upon signing this Agreement, Provider may issue a high-level press release announcing the relationship and the manner in which Customer will use the Service. Customer may require Provider to withdraw any use of Customer's trademarks, name, and logos if Customer reasonably considers that Provider's use of the trademark, name, and logo is derogatory, defamatory, or detrimental to Customer or in any way damages Customer's business or reputation.

(d) Force Majeure. In no event shall either Party be liable to the other Party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

(e) Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(f) Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(g) Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the Commonwealth of Kentucky without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the Commonwealth of Kentucky. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the Commonwealth of Kentucky in each case located in the city of Louisville and County of Jefferson, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

(h) Compliance with Healthcare Laws. The Parties intend that this Agreement fully complies with all federal, state, and local laws relating to relationships among entities involved in the provision of healthcare, including without limitation 42 U.S.C. § 1320a-7b(b) and 42 U.S.C. §1395nn (collectively, “**Healthcare Laws**”). The Parties have each separately adopted an organizational compliance plan to assist them in ensuring compliance with Healthcare Laws in their respective operations, and the Parties agree to cooperate reasonably with each other’s compliance efforts. No part of this Agreement is intended, and no part of this Agreement will be construed, to induce, encourage, solicit, or reimburse the referral of any patients or business, including any patients or business funded in whole or in part by a federal healthcare program. All referrals will be in the unfettered professional discretion of the referring physician or other professional. The Parties acknowledge that there is no requirement under this Agreement or any other agreement between the Parties that either Party refer any patients to each other or their respective affiliates. Nevertheless, the Parties agree that if either Party determines at any time, or for any reason, that any aspect of the terms or operation of this Agreement may be deemed to constitute a violation of Healthcare Laws, then such Party may give written notice to the other Party, and both Parties will use their best efforts to restructure their respective rights and obligations in a manner allowed by law and to amend this Agreement accordingly. If the Parties are not able to agree upon a modification of the problematic provisions of this Agreement within ten (10) days after receipt of such notice, then either Party may terminate this Agreement upon thirty (30) days’ written notice to the other Party.

(i) Assignment. Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Provider. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

(j) Export Regulation. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary

export license or other governmental approval), that prohibit or restrict the export or re-export of the Service or any Customer Data outside the US.

(k) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6 or, in the case of Customer, Section 2(c), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

(l) Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

*[Signature Page to Follow]*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

BAMBOO HEALTH, INC.

CHATHAM COUNTY

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Jennie Kristiansen

Title: \_\_\_\_\_

Title: Director, Chatham County Social Services

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **SCHEDULE 1 – CUSTOMER LOCATIONS**

*Chatham County Department of Social Services*

*102 Camp Dr.*

*Pittsboro, NC 27312*

## EXHIBIT A - SERVICE AND PRICING

*Capitalized terms used but not defined in this Exhibit A have the meaning given to those terms in the Agreement.*

**1. Services.** This Service and Pricing Exhibit A is effective upon the Subscription Agreement Effective Date and documents the Service(s) being provided to Customer under the terms and conditions of the Agreement.

**1.1 General Description.** North Carolina OpenBeds Platform is a SaaS platform that identifies, unifies, and tracks all behavioral health treatment inpatient beds, outpatient programs, and social resources to create a single, common network of treatment providers and referring entities. This cloud-based platform replaces inefficient and less effective manual search, communication and reporting functions and facilitates rapid transfers/referrals. It accomplishes this by providing treatment facility availability, evidence-based therapy offerings, two-way digital provider communication, and data aggregation and analytics. North Carolina OpenBeds Platform fosters collaboration among medical and mental health providers, social services, and substance use programs. It is highly configurable, allowing both sides of the transaction to conform the platform to existing networks and protocols.

### **1.2 Services and Capabilities.**

- Inventory of available resources; transparent capacity of inpatient and outpatient services throughout an entire network of treatment providers
- Secure digital communications between treatment center and referring entities
- Email and text notification capability
- Digital registration and authentication
- Analytics dashboard tracks utilization and referral patterns at organization, regional and state levels
- Directed referral capability to specific facility or treatment type
- Feedback regarding treatment engagement
- Connection to social and other support services
- Access to self- or family-generated referrals for treatment from a public-facing internet access point

### **1.3 General Support Services**

**1.3.1 Configuration and Registration.** OpenBeds will assist Customer to configure its services and identify and create accounts for users.

**1.3.2 Provider and Administrator Training.** OpenBeds will provide training sessions and technical assistance for users in North Carolina using the North Carolina OpenBeds Platform at no cost to Customer. This training is subject to the availability of OpenBeds training staff and delivered via a combination of remote online electronic audio-video conference with OpenBeds training personnel and/or online tutorials. Additional training may be scheduled. Customer may also elect to schedule in-person training with OpenBeds training personnel.



**1.3.3 Training Materials** including operator manuals OpenBeds Platform are available online through the OpenBeds® software 'Help' function and by request.

**1.3.4 Customer Support** available via telephone or electronic support during OpenBeds' normal business hours in order to help Customer's authorized users locate and correct problems with the Service.

**1.3.5 Technical Support** available via telephone or electronic support during OpenBeds' normal business hours in order to help Customer's authorized users specifically with platform technical glitches.

**1.4. System Maintenance.** OpenBeds may take the Service offline for scheduled maintenance during periods of low usage. OpenBeds will provide Customer with prior notice of the maintenance schedule.

**1.4.1. Technical Issues Resolution Goals.** See Exhibit B.

**2. Pricing.** *There are no fees to be paid by Customer for the services, training, and support described in this agreement.*

## **EXHIBIT B**

### **TECHNICAL ISSUES RESOLUTION GOALS**

**1. Severity 1:** The Production system / application is down, critically impacted and there is no reasonable workaround currently.

**1.1** Upon confirmation of receipt, the Company will immediately begin continuous work on the issue, and a customer resource must be available at any time to assist with problem determination.

**1.2** Once the issue is reproducible or once we have identified the software defect, the Company support will provide reasonable effort for workaround or solution.

**2. Severity 2:** The system or application is seriously affected. The issue is not critical and does not comply with the Severity 1 conditions. There is no workaround currently available or the workaround is cumbersome to use.

**2.1** The Company will work during normal business hours starting within 7 business days to provide reasonable effort for workaround or solution, once the issue is reproducible.

**3. Severity 3:** The system or application is moderately affected. The issue is not critical and the system has not failed. The issue has been identified and does not hinder normal operation, or the situation may be temporarily circumvented using an available workaround. OpenBeds will work during normal business hours to provide reasonable effort for workaround or solution once the issue is reproducible.

**4. Severity 4:** Non-critical or non-serious issues. OpenBeds will seek during normal business hours to provide a solution in future releases of the Service.

## **EXHIBIT C -**

### **OPENBEDS BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”) is entered into by and between Chatham County, by and through its Department of Social Services (“Covered Entity”), and Bamboo Health, Inc., a Delaware corporation (“OpenBeds”), effective as of date of last signature Effective Date”).

#### **RECITALS**

Chatham County is a “Covered Entity” as that term is defined under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the HIPAA administrative simplification regulations, 45 C.F.R. Parts 160 and Part 164, Subparts A, C and E (Subpart E, together with the definitions in Subpart A is known as the “Standards for Privacy of Individually Identifiable Health Information” (the “Privacy Rule”) and Subpart C, together with the definitions in Subpart A, is known as the “Security Standards for the Protection of Electronic Protected Health Information” (the “Security Rule”) (the Privacy Rule and the Security Rule are collectively called the “Privacy and Security Rules”).

Covered Entity and OpenBeds are parties to a services or license agreement (“Underlying Agreement”), under which OpenBeds provides certain services to Covered Entity. In connection with OpenBeds’s provision of services to Covered Entity, Covered Entity discloses to OpenBeds “Protected Health Information” (“PHI”), including “Electronic Protected Health Information” (“ePHI”), as defined in 45 C.F.R. §160.103. Such disclosure results in OpenBeds’s use, disclosure, maintenance and/or creation of PHI, including ePHI, on behalf of Covered Entity.

OpenBeds’s provision of services to Covered Entity, when coupled with Covered Entity’s disclosure of PHI to OpenBeds, makes OpenBeds a “business associate” of Covered Entity, as the term is defined in as defined in 45 C.F.R. §160.103.

The purpose of this Agreement is to comply with the requirements of the Privacy and Security Rules, including, but not limited to, the Business Associate Agreement requirements at 45 C.F.R. §§ 164.314(a) and 164.504(e), and to satisfy the provisions of the Health Information Technology for Economic and Clinical Health Act, set forth in Division A, Title XIII, of the American Recovery and Reinvestment Act of 2009, and its implementing regulations and guidance (collectively, “HITECH”), including the Omnibus Final Rule, that: (i) affect the relationship between a Business Associate and a Covered Entity and which under HITECH and the Omnibus Final Rule require amendments to the Business Associate Agreement; and (ii) enable Covered Entity to comply with the requirement to notify affected individuals in the event of a Breach of Unsecured Protected Health Information.

Covered Entity’s disclosure of PHI to OpenBeds, and OpenBeds’s use, disclosure and creation of PHI for or on behalf of Covered Entity, is subject to protection and regulation under the Privacy Rule. To the extent such use, disclosure or creation involves ePHI, such ePHI is subject

to protection and regulation under the Security Rule. OpenBeds acknowledges it shall comply with the Privacy and Security Rules regarding the use and disclosure of PHI and ePHI, pursuant to this Agreement and as required by HITECH and its implementing regulations.

Therefore, Covered Entity and OpenBeds agree as follows:

1. Definitions.

- (a) Unless otherwise provided in this Agreement, capitalized terms have the same meanings as set forth in the Privacy Rule, Security Rule, HITECH, and the Omnibus Final Rule.
- (b) “PHI” means “Protected Health Information,” as that term is defined in the Privacy and Security Rules. “ePHI” means “Electronic Protected Health Information,” as that term is defined in the Privacy and Security Rules. PHI includes PHI that is ePHI as well as PHI that does not constitute ePHI.
- (c) “Unsecured PHI” or “Unsecured Protected Health Information” includes PHI in any form that is not secured through use of a technology or methodology specified in the HITECH, those being: (1) encryption for ePHI in accordance with the appropriate NIST standards for data at rest and in transit; or (2) destruction for other forms of PHI.
- (d) “ePHI” means any PHI that is received, maintained, transmitted or utilized for any purpose in electronic form by OpenBeds on behalf of Covered Entity.
- (e) “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended by the Stimulus Act; and regulations adopted pursuant thereto, including but not limited to 45 C.F.R. Parts 160 and 164.
- (f) “HITECH Act” means the American Recovery and Reinvestment Act of 2009 (P.L. 111-5), Div. A, Title XIII and Div. B, Title IV, the Health Information Technology for Economic and Clinical Health Act.
- (g) “Omnibus Final Rule” means the Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules, as published at 78 FR 5565 on January 25, 2013, when and as effective.
- (h) “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. Security Incidents shall not include routine activity such as pings and other broadcast attacks on OpenBeds's firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access to Protected Health Information, or any use or disclosure of Protected Health Information.

2. Scope of Uses and Disclosures by OpenBeds.

- (a) In General. Except as otherwise limited in this Agreement or by law, OpenBeds may use or disclose PHI provided to OpenBeds by Covered Entity to perform the functions, activities, or services for or on behalf of Covered Entity that are specified in the Underlying Agreement, provided that such uses or disclosures would not violate the Privacy Rule if done by a Covered Entity or the Minimum Necessary policies and procedures of OpenBeds.
- (b) Use of PHI. Except as otherwise limited in this Agreement or by law, OpenBeds may use PHI for the proper management and administration of OpenBeds or to carry out the legal responsibilities of OpenBeds.
- (c) Disclosure of PHI. Except as otherwise limited in this Agreement or by law, OpenBeds may disclose PHI for the proper management and administration of OpenBeds or to carry out the legal responsibilities of OpenBeds, provided that disclosures are required by law, or OpenBeds obtains reasonable assurances, in writing, from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies OpenBeds, in writing, within five (5) business days, of any instances of which it is aware in which the confidentiality of the information has been breached.
- (d) Data Aggregation. Except as otherwise limited in this Agreement or by law, OpenBeds may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).
- (e) Limitation on Use and Disclosure of PHI. With regard to its use and/or disclosure of PHI necessary to perform its obligations to Covered Entity, OpenBeds agrees to limit disclosures of PHI to the Minimum Necessary (as defined in the Privacy Rule, as modified by HITECH and the Omnibus Final Rule) to accomplish the intended purpose of the use, disclosure or request, respectively, whenever the Privacy Rule limits the use or disclosure in question to the Minimum Necessary.
- (f) Limitation on Remuneration for PHI. With regard to its use and/or disclosure of PHI necessary to perform its obligations to Covered Entity and to comply with HITECH and the Omnibus Final Rule, OpenBeds agrees that it will not receive direct or indirect remuneration for any exchange of PHI not otherwise authorized without individual authorization, unless (i) specifically required for the provision of services under the Underlying Agreement (ii) for treatment purposes; (iii) providing the individual with a copy of his or her PHI; or (iv) otherwise determined by the Secretary in regulations.

- (g) Reporting Violation of Law. OpenBeds may use PHI to report a violation of law to appropriate Federal and/or State authorities, consistent with 45 CFR §164.502(j)(1).

3. Obligations of OpenBeds.

- (a) In General. OpenBeds shall use or further disclose PHI only as permitted or required by this Agreement or as required by law.
- (b) Safeguards. OpenBeds shall use reasonable and appropriate safeguards to prevent use or disclosure of PHI other than as specifically authorized by this Agreement. Such safeguards shall at a minimum include: (i) a comprehensive written information privacy and security policy addressing the requirements of the Privacy and Security Rules, as amended by HITECH and the Omnibus Final Rule, that are directly applicable to OpenBeds; and (ii) periodic and mandatory privacy and security training and awareness for members of OpenBeds's Workforce.
- (c) Mitigation. OpenBeds shall mitigate any harmful effect that is known to OpenBeds of a use or disclosure of PHI by OpenBeds that violates the requirements of this Agreement or applicable law.
- (d) Reporting. OpenBeds shall report to Covered Entity any use or disclosure of PHI that is not sanctioned by this Agreement of which OpenBeds becomes aware within five (5) business days.
- (e) Subcontractors. OpenBeds shall require subcontractors or agents to whom OpenBeds provides PHI to agree, in writing, to comply with the Privacy and Security Rules, as amended by HITECH and the Omnibus Final Rule, to the same extent OpenBeds is required to comply.
- (f) Inspection by Secretary. OpenBeds shall make available to the Secretary of Health and Human Services OpenBeds's internal practices, books and records relating to the use and disclosure of PHI for purposes of determining Covered Entity and OpenBeds's compliance with the Privacy and Security Rules, HITECH, and the Omnibus Final Rule subject to any applicable legal privileges.
- (g) Accounting of Disclosures of PHI. OpenBeds shall document disclosures of PHI and information related to those disclosures necessary to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with the Privacy Rule, as required by HITECH, and provide to Covered Entity, and in the time and manner it reasonably specifies but in no case longer than fifteen (15) business days, the information necessary to make an accounting of disclosures of PHI about an Individual. If PHI is maintained in an Electronic Health Record ("EHR"), OpenBeds shall document and maintain documentation of such disclosures as

would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures in an EHR, as required by HITECH.

- (h) Access to PHI. OpenBeds shall provide to Covered Entity, at Covered Entity's request and in the time and manner it reasonably specifies but in no case longer than fifteen (15) business days, PHI necessary to respond to Individuals' requests for access to PHI about them, in the event that the PHI in OpenBeds's possession constitutes a Designated Record Set. If PHI is maintained in an Electronic Health Record, OpenBeds shall provide access electronically, upon reasonable request of Covered Entity.
- (i) Amendment to PHI. OpenBeds shall, upon receipt of notice from Covered Entity but in no case longer than fifteen (15) business days, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule, in the event that the PHI in OpenBeds's possession constitutes a Designated Record Set.
- (j) Security of PHI. OpenBeds shall, as described in HITECH Act §13401, comply with 45 CFR §§ 164.308, 164.310, 164.312, and 164.316 of the Security Rule and acknowledges that such provisions apply to OpenBeds in the same manner that they apply to Covered Entity. Therefore, OpenBeds agrees that it is required to maintain appropriate and reasonable administrative, physical, and technical safeguards, including documentation of the same, so as to ensure that PHI is not used or disclosed other than as provided by this Agreement or as required by law, including the following:
  - (i) Administrative safeguards (implementation of policies and procedures to prevent, detect, contain, and correct security violations; conducting and documentation of risk analysis and risk management);
  - (ii) Physical safeguards (implementation of policies and procedures to limit physical access to PHI or ePHI or electronic information systems and related facilities);
  - (iii) Technical safeguards (implementation of policies and procedures creating and tracking unique user identification, authentication processes, and transmission security);
  - (iv) Policies and procedures to reasonably and appropriately document the foregoing safeguards as required by the Security Rule; and
  - (v) Ensuring that any agent, including any subcontractor, to whom OpenBeds provides ePHI agrees, in writing, to comply with these administrative, physical, and technical safeguards, as well as the policies, procedures, and document requirements contained within the Security Rule.
- (k) Civil and Criminal Liability. OpenBeds acknowledges that it shall be liable under the civil and criminal enforcement provisions set forth at 42 USC §§1320d-5 and

1320d-6, as amended from time to time, for failure to comply with any use or disclosure requirements of this Agreement with respect to PHI and for failure to comply with its direct obligations under the Privacy and Security Rules, HITECH, and the Omnibus Final Rule.

- (1) Notification of Security Incidents and Breach of Unsecured PHI. OpenBeds shall immediately, but in no case longer than five (5) business days following discovery, notify Covered Entity of any actual or suspected Security Incident or Breach of Unsecured Protected Health Information. The notice shall include: (i) the identification of each Individual whose PHI or Unsecured PHI has been or is reasonably believed by OpenBeds to have been accessed, acquired, used or disclosed during the Security Incident or Breach, (ii) a brief description of what happened, including the date of the Security Incident or Breach and the date of the discovery of the Security Incident or Breach, (iii) a description of the types of PHI or Unsecured PHI that were involved in the Security Incident or Breach, (iv) any preliminary steps taken to mitigate the damage, and (v) a description of any investigatory steps taken. In addition, OpenBeds shall provide any additional information reasonably requested by Covered Entity for purposes of investigating a Breach of Unsecured PHI. A Breach shall be treated as discovered by OpenBeds as of the first day on which the Breach is known to OpenBeds (including any person, other than the Individual committing the Breach, that is an employee, officer, or other agent of OpenBeds) or should reasonably have been known to OpenBeds to have occurred. Covered Entity shall have the sole right to determine, with respect to a Breach: (i) whether notice is to be provided to Individuals, regulators, law enforcement agencies, consumer reporting agencies, media outlets and/or the Department of Health and Human Services, or others as required by law or regulation, in Covered Entity's discretion; and (ii) the contents of such notice, whether any type of remediation may be offered to Individuals affected, and the nature and extent of any such remediation.

#### 4. Obligations of Covered Entity.

- (a) Limitation in Notice of Privacy Practices. Covered Entity will notify OpenBeds of any limitation in Covered Entity's Notice of Privacy Practices in accordance with the Privacy Rule, to the extent that the limitation may affect OpenBeds's use or disclosure of PHI.
- (b) Changes in Permission by Individual. Covered Entity will notify OpenBeds of any changes in, or revocation of, permission by an Individual to use or disclose PHI to the extent that the change may affect OpenBeds's use or disclosure of PHI.
- (c) Restriction on Use/Disclosure of PHI. Covered Entity will notify OpenBeds of any restriction on the use or disclosure of PHI that has been agreed to with an Individual and any restrictions on marketing or fundraising to the extent that the restriction may affect OpenBeds's use or disclosure of PHI.



- (d) Permitted by the Privacy Rule or HITECH. Covered Entity will not request OpenBeds to use or disclose PHI in any manner that would not be permissible under the Privacy Rule or HITECH if done by a Covered Entity, except to the extent OpenBeds will use or disclose PHI for, and this Agreement includes provisions for, Data Aggregation by or management, administrative, and legal activities of OpenBeds.

5. Term and Termination.

- (a) Term of the Agreement. The term of this Agreement begins on the Effective Date and ends when all of the PHI provided to OpenBeds by Covered Entity, or created or received by OpenBeds on behalf of Covered Entity, is destroyed or returned to Covered Entity. To the extent it is infeasible for OpenBeds to return or destroy the PHI, upon the agreement of Covered Entity, protections shall be extended to that PHI in accordance with the termination provisions in this Section.
- (b) Termination for Breach. Either party may terminate this Agreement if it determines that the other party has breached a material term of this Agreement. Alternatively, the non-breaching party may choose to provide the breaching party with notice of the existence of an alleged material breach and afford an opportunity to cure the material breach. If the breaching party fails to cure the breach to the satisfaction of the non-breaching party, the non-breaching party may immediately thereafter terminate this Agreement.
- (c) Automatic Termination. This Agreement will automatically terminate on the date OpenBeds ceases to provide to the services described in the Underlying Agreement.
- (d) Effect of Termination. Upon termination of this Agreement, OpenBeds will return or destroy all PHI received from Covered Entity or created or received by OpenBeds on behalf of Covered Entity that OpenBeds still maintains and will retain no copies of that PHI. However, if this return or destruction is not feasible, upon the agreement of Covered Entity, then OpenBeds will extend the protections of this Agreement to the PHI and will limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

- 6. Agreement. Covered Entity and OpenBeds agree to take any reasonable action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity and OpenBeds to comply with the requirements of the Privacy and Security Rules, HITECH, the Omnibus Final Rule, and any other implementing regulations or guidance.
- 7. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules, HITECH, and the Omnibus Final Rule.

8. Survival. The obligations of OpenBeds under Section 5(d) of this Agreement survive any termination of this Agreement.
9. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything in this Agreement confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
10. Independent Contractor Status. OpenBeds will be considered, for all purposes, an independent contractor, and OpenBeds will not, directly or indirectly, act as agent, servant or employee of Covered Entity or make any commitments or incur any liabilities on behalf of Covered Entity without its express written consent. Nothing in this Agreement shall be deemed to create an employment, principal-agent, or partner relationship between the parties. OpenBeds shall retain sole and absolute discretion in the manner and means of carrying out its activities and responsibilities under this Agreement.
11. General Administrative Provisions.
  - (a) Any notices required by this Agreement will be sent to the latest known address of either party by (i) facsimile, email, registered or certified mail or by private delivery service that provides receipts to the sender and recipient, (ii) personally delivered or (iii) by regular mail. Each party reserves the right to designate an additional address or a separate address for notices to be sent. Notices are deemed given (i) on the date of the facsimile or email transmittal, (ii) the date shown on the registered mail, certified mail or private delivery service receipt, (iii) the date personally delivered, or (iii) two business days after the date of mailing of a notice sent by regular mail.
  - (b) Each party agrees to promptly perform any further acts and execute, acknowledge, and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement or effect its purpose.
  - (c) In the event that any of the provisions or portions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions or portions will not be affected.
  - (d) The waiver by a party of any breach of any term, covenant, or condition in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition of this Agreement. A party's subsequent acceptance of performance by the other party shall not be deemed to be a waiver of any preceding breach of any term, covenant or condition of this Agreement other than the failure to perform the particular duties so accepted, regardless of knowledge of such preceding breach at the time of acceptance of the performance.
  - (e) This Agreement constitutes the entire agreement among the parties with respect to the subject matter of this Agreement and supersedes any prior agreements, whether written or oral, pertaining to that subject matter.

- (f) This Agreement may be executed in one or more counterparts, any one of which may be considered an original copy.