

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (“Business Associate Agreement”), effective December 1, 2021 (“Effective Date”), is entered into by and between (the “Business Associate”), with an address at and **VALLEY HEALTH SYSTEM**, for and on behalf of The Valley Hospital and Valley Home Care, with an address at 223 North Van Dien Avenue, Ridgewood, New Jersey 07450; **VALLEY PHYSICIAN SERVICES, PC** with an address at 15 Essex Road, Paramus, New Jersey 07652; **VALLEY MEDICAL SERVICES, PC** with an address at 15 Essex Road, Paramus, New Jersey 07652; and **VALLEY PHYSICIAN SERVICES, NY, PC** with an address at 15 Essex Road, Paramus, New Jersey 07652 (collectively, the “Covered Entity”) (Business Associate and Covered Entity are each individually referred to in this Business Associate Agreement as a “Party” and together as the “Parties”).

RECITALS

WHEREAS, the Parties have entered into an agreement (the “Agreement”) under which the Business Associate may come into contact with, use and/or disclose Protected Health Information and/or Electronic Protected Health Information in its performance of the services described below;

WHEREAS, both Parties are committed to complying with the Health Insurance Portability and Accountability Act regulations related to the Privacy and Security of Individually Identifiable Health Information (the “HIPAA Regulations”) promulgated under the Health Insurance Portability and Accountability Act of 1996 (the “HIPAA Statute”), as well as the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009 (the “HITECH Act”) and its implementing regulations (the “Final Rules”) (collectively, the HIPAA Regulations, HIPAA Statute, HITECH Act and Final Rules are referred hereinafter simply as “HIPAA”);

WHEREAS, this Business Associate Agreement sets forth the terms and conditions pursuant to which Protected Health Information and Electronic Protected Health Information that is created, received, maintained or transmitted by the Business Associate from or on behalf of the Covered Entity (hereinafter, “Covered Entity’s Protected Health Information”) will be handled during the term of the Agreement and after its termination.

NOW THEREFORE, in consideration of the foregoing, the mutual representations, covenants and agreements set forth below and in the underlying Agreement, and for other good and valuable consideration, the Parties hereby agree as follows:

1. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

1.1 **Services and Uses.** Pursuant to the Agreement, Business Associate provides services (“Services”) for the Covered Entity that involve the use and disclosure of Covered Entity’s Protected Health Information. Except as otherwise specified herein, the Business Associate may make any and all uses of Covered Entity’s Protected Health Information necessary to perform its obligations under the Agreement, this Business Associate Agreement or as

Required By Law, provided that any such use or disclosure would not violate the HIPAA Privacy or Security Rules if done by Covered Entity. All other uses not authorized by the Agreement, this Business Associate Agreement or by law are prohibited.

1.2 Business Activities of the Business Associate. Unless otherwise limited herein, the Business Associate may:

- a. use Covered Entity's Protected Health Information received or created by Business Associate in its capacity as Covered Entity's business associate if necessary for its proper management and administration of Business Associate, or to carry out any present or future legal responsibilities of the Business Associate, provided that such uses are permitted under state and federal law.
- b. disclose Covered Entity's Protected Health Information received or created by Business Associate in its capacity as Covered Entity's business associate for the purpose of its proper management and administration, or to carry out any present or future legal responsibilities of the Business Associate, but only if: (i) the disclosures are "Required By Law" (as such quoted term is defined in HIPAA) or (ii) the Business Associate has received from the third party satisfactory written assurances regarding its confidential handling of Covered Entity's Protected Health Information as required under 45 C.F.R. §164.504(e)(4). Before allowing any such disclosure to a third party, Business Associate hereby agrees to represent to the Covered Entity in writing that it has met the requirements of this subsection 1.2b.

1.3 Other Activities of Business Associate. In addition to using Covered Entity's Protected Health Information to perform the Services set forth in Section 1.1 of this Agreement, Business Associate may:

- a. aggregate Covered Entity's Protected Health Information in its possession with the Protected Health Information of other covered entities that the Business Associate has in its possession through its capacity as a business associate to said other covered entities provided that the purpose of such data aggregation is to provide Covered Entity with data analyses relating to the Health Care Operations of Covered Entity. Under no circumstances may the Business Associate disclose Covered Entity's Protected Health Information to another covered entity absent the explicit authorization of Covered Entity and otherwise in compliance with applicable law.
- b. de-identify Covered Entity's Protected Health Information, provided that the resulting de-identified data set conforms to the requirements of 45 C.F.R. §164.514 (a) and (b), and further provided that with respect to each de-identified data set that Business Associate wishes to create, Business Associate maintains the documentation required by 45 C.F.R. §164.514(b)(1)(ii), which shall be made available to Covered Entity upon Covered Entity's request, or Business Associate provides written assurance to Covered Entity that all identifiers are removed as required by 45 C.F.R. §164.514(b)(2). As long as the requirements of this Section 1.3b and HIPAA are met,

Business Associate's use and disclosure of de-identified information is not subject to the terms of this Business Associate Agreement.

2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PROTECTED HEALTH INFORMATION

2.1 Responsibilities of the Business Associate. With regard to the use and/or disclosure of Covered Entity's Protected Health Information, the Business Associate hereby agrees:

- a. not to use or disclose Covered Entity's Protected Health Information other than as permitted or required by this Business Associate Agreement or as Required By Law.
- b. to promptly report within forty-eight (48) hours to the Privacy Officer of Covered Entity, by telephone and followed in writing, any discovered use and/or disclosure of Covered Entity's Protected Health Information that is not permitted or required by this Business Associate Agreement or by law, including any Breach of Unsecured Protected Health Information, as required at 45 C.F.R. §164.410, and any Security Incident of which it becomes aware. In accordance with 45 C.F.R. § 164.402, any acquisition, access, use or disclosure of Covered Entity's Protected Health Information in a manner not permitted under HIPAA shall be presumed by Business Associate to be a Breach. A Breach shall be deemed "discovered" by Business Associate as of the first day on which such Breach is actually known to any person, other than the individual committing the Breach, that is an employee, officer, or other agent of Business Associate, or if such Breach should reasonably have been known to Business Associate to have occurred, including but not limited to notification of a Breach provided to Business Associate by a subcontractor. In no case shall Business Associate make such report later than two (2) days from the date of actual or constructive discovery by Business Associate. The Parties acknowledge and agree that this Section 2.1.b constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but unsuccessful Security Incidents of which no additional notice to Covered Entity is required. Unsuccessful Security Incidents include, but are not limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the aforementioned, as long as such incidents do not result in the unauthorized access, use, disclosure, modification or destruction of Covered Entity's Protected Health Information.
- c. to establish procedures for mitigating, to the greatest extent possible, any and all deleterious effects from any improper use and/or disclosure of Covered Entity's Protected Health Information that Business Associate discovers (including, without limitation, any Breach or Security Incident).

Business Associate agrees to reasonably cooperate and coordinate with Covered Entity in the investigation of any violation of the requirements of this Business Associate Agreement and/or any Breach or Security Incident. Business Associate shall also reasonably cooperate and coordinate with Covered Entity in the preparation of any reports or notices to the Individual, a regulatory body or any third party,

including the media, required to be made under HIPAA or any other federal or state laws, rules or regulations, provided that any such reports or notices shall be subject to the prior written approval of Covered Entity. Business Associate agrees to pay the reasonable costs associated with any Breach and notification procedures arising from a negligent act or omission by Business Associate.

- d. to use commercially reasonable efforts to maintain the security of Covered Entity's Protected Health Information and use appropriate safeguards to prevent unauthorized use and/or disclosure of such Protected Health Information other than as provided for by this Business Associate Agreement.
- e. in accordance with 45 C.F.R. §164.502(e)(1)(ii) and §164.308(b)(2), to require and ensure that any and all of its subcontractors and agents that create, receive, maintain, or transmit Covered Entity's Protected Health Information on behalf of Business Associate to agree, in writing, to adhere to the same restrictions and conditions on the use and/or disclosure of Covered Entity's Protected Health Information that apply to the Business Associate pursuant to this Business Associate Agreement. Business Associate shall immediately report to Covered Entity any real or suspected breaches of Covered Entity's Protected Health Information by any subcontractor and assist Covered Entity in its legal obligations and pay costs, as necessary, for notification or other requirements.
- f. to make available all its internal records, books, agreements, practices, policies and procedures relating to the use and/or disclosure of Covered Entity's Protected Health Information or as required by HIPAA's Security Rule relating to Safeguards to the Secretary of HHS for purposes of determining the Covered Entity's or Business Associate's compliance with HIPAA, subject to attorney-client and other applicable legal privileges.
- g. upon prior written request, to make available during normal business hours at Business Associate's offices all records, books, agreements, policies and procedures relating to the use and/or disclosure of Covered Entity's Protected Health Information to the Covered Entity within five (5) business days for purposes of enabling the Covered Entity to determine the Business Associate's compliance with the terms of this Business Associate Agreement and/or HIPAA, subject to attorney-client and other applicable legal privileges. Notwithstanding the foregoing, the Parties acknowledge and agree that the right conferred to Covered Entity under this Subsection to assess Business Associate's compliance with HIPAA and this Business Associate Agreement does not obligate or create any duty on Covered Entity, in whole or in part, to ensure Business Associate's compliance, and Business Associate acknowledges and agrees that it solely is responsible for ensuring its compliance with HIPAA and this Business Associate Agreement.
- h. within thirty (30) days of receiving a written request from Covered Entity, to provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an Accounting of

Disclosures of the individual's Protected Health Information in accordance with 45 C.F.R. §164.528, as may be amended in the future. If an Individual makes a request for an Accounting of Disclosures directly to Business Associate, Business Associate shall notify Covered Entity of the request within three (3) business days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual. Should the Business Associate maintain records in electronic format, it shall account for all disclosures for the time period set out by law and as requested by Covered Entity.

- i. Unless falling within an exception under 45 C.F.R. §164.502(b)(2), when using or disclosing Covered Entity's Protected Health Information or when requesting Covered Entity's Protected Health Information from the Covered Entity, make reasonable efforts to limit Covered Entity's Protected Health Information to the Minimum Necessary to accomplish the intended purpose of the use, disclosure, or request.
- j. to implement administrative, physical, and technical safeguards ("Safeguards") that reasonably and appropriately protect the confidentiality, integrity, and availability of Covered Entity's Protected Health Information as required by HIPAA's Security Rule.
- k. to ensure that any agent and subcontractor that creates, receives, maintains or transmits Covered Entity's Protected Health Information on behalf of Business Associate agrees to implement reasonable and appropriate Safeguards to protect Covered Entity's Protected Health Information and comply with HIPAA's Security and Privacy Rules, as applicable, by entering into a written contract that complies with 45 C.F.R. §164.314 or §164.504(e) as applicable.
- l. to encrypt Covered Entity's Protected Health Information when maintained "at rest" and transmitted by Business Associate.

2.2 Responsibilities of the Covered Entity. With regard to the use and/or disclosure of Covered Entity's Protected Health Information by Business Associate, Covered Entity hereby agrees:

- a. to post a copy of the Notice of Privacy Practices (the "Notice") that the Covered Entity provides to individuals pursuant to 45 C.F.R. §164.520 at www.valleyhealth.com.
- b. to inform Business Associate of any changes in, or withdrawal of, the consent or Authorization provided to Covered Entity by individuals in accordance with 45 C.F.R. §164.506 or §164.508.
- c. to notify Business Associate, in writing and in a timely manner, of any arrangements permitted or required of Covered Entity under 45 C.F.R. Part 160 and 164 that may impact in any manner the use and/or disclosure of Covered Entity's Protected Health Information by Business Associate under this Business Associate Agreement,

including, but not limited to, restrictions on use and/or disclosure of Covered Entity's Protected Health Information as provided for in 45 C.F.R. §164.522 agreed to by Covered Entity, which Business Associate shall comply with.

3. ADDITIONAL RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PROTECTED HEALTH INFORMATION

3.1 Responsibilities of the Business Associate with Respect to Handling of Designated Record Set. In the event that the Parties mutually agree in writing that Covered Entity's Protected Health Information constitutes a Designated Record Set, Business Associate hereby agrees to:

- a. at the request of, and in the time and manner designated by Covered Entity, provide access to Covered Entity's Protected Health Information to Covered Entity or the Individual to whom such Protected Health Information relates or his or her Authorized Representative in order to meet a request by such individual under 45 C.F.R. §164.524. If an Individual makes a request for access to his/her Protected Health Information directly to Business Associate, Business Associate shall notify Covered Entity of the request within three (3) business days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual.
- b. at the request of, and in the time and manner designated by Covered Entity, make any amendment(s) to Covered Entity's Protected Health Information that the Covered Entity directs and are required pursuant to 45 C.F.R. §164.526. If an Individual makes a request for an amendment to Covered Entity's Protected Health Information directly to Business Associate, Business Associate shall notify Covered Entity of the request within three (3) business days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual.

3.2 Responsibilities of the Covered Entity with Respect to the Handling of the Designated Record Set. In the event that the Parties mutually agree in writing that Covered Entity's Protected Health Information constitutes a Designated Record Set, Covered Entity hereby agrees to do the following:

- a. notify Business Associate, in writing, of any Protected Health Information that Covered Entity seeks to make available to an Individual pursuant to 45 C.F.R. § 164.524 and the time, manner and form in which Business Associate shall provide such access.
- b. notify Business Associate, in writing, of any amendment(s) to Covered Entity's Protected Health Information in the possession of Business Associate that Business Associate shall make and inform Business Associate of the time, form and manner in which such amendment(s) shall be made.

4. REPRESENTATIONS AND WARRANTIES

4.1 Mutual Representations and Warranties of the Parties. Each Party represents and warrants to the other Party:

- a. that all of its employees, agents, subcontractors, representatives and members of its workforce, whose services may be used to fulfill obligations under this Business Associate Agreement are or shall be appropriately informed of the terms of this Business Associate Agreement and are under legal obligation to each Party, respectively, by contract or otherwise, sufficient to enable each Party to fully comply with all provisions of this Business Associate Agreement including, without limitation, the requirement that modifications or limitations that the Covered Entity has agreed to adhere to with regards to the use and disclosure of Protected Health Information of any individual that materially affects and/or limits the uses and disclosures that are otherwise permitted under the Standard will be communicated to the Business Associate, in writing, and in a timely fashion.
- b. that it will reasonably cooperate with the other Party in the performance of the mutual obligations under this Business Associate Agreement.
- c. that neither the Party, nor its trustees, shareholders, members, directors, officers, agents, subcontractors, employees or members of its workforce have been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or state healthcare program, including but not limited to Medicare or Medicaid, or have been convicted, under federal or state law (including without limitation a plea of nolo contendere or participation in a first offender deterred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (a) the neglect or abuse of a patient, (b) the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or state healthcare program, (c) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, state or local government agency, (d) the unlawful, manufacture, distribution, prescription or dispensing of a controlled substance, or (e) interference with or obstruction of any investigation into any criminal offense described in (a) through (d) above. Each Party further agrees to notify the other Party immediately after the Party becomes aware that any of the foregoing representation and warranties may be inaccurate or may become incorrect.

5. TERM AND TERMINATION

- ##### **5.1 Term.** This Business Associate Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the Parties have been met, unless terminated as provided in this Section 5. In addition, certain provisions and requirements

of this Business Associate Agreement shall survive its expiration or other termination in accordance with Section 7.3 herein.

- 5.2 Termination by the Covered Entity. As provided for under 45 C.F.R. §164.504(e)(2)(iii), Covered Entity may immediately terminate this Business Associate Agreement and any related agreements if Covered Entity makes the determination that Business Associate has breached a material term of this Business Associate Agreement. Alternatively, Covered Entity may choose to: (i) provide Business Associate written notice of the existence of an alleged material breach within five (5) business days' of Covered Entity's discovery of such material breach; and (ii) afford Business Associate an opportunity to cure said alleged material breach upon mutually agreeable terms. In the event that mutually agreeable terms cannot be achieved within ten (10) business days, Business Associate must nevertheless cure said material breach to the satisfaction of the Covered Entity within such amount of time as is acceptable to the Covered Entity, in its reasonable discretion. Failure to cure in the manner set forth in this paragraph is grounds for the immediate termination of this Business Associate Agreement and related Agreement. If termination is not feasible, Covered Entity shall report the violation to the Secretary. Notwithstanding the foregoing, if Business Associate is Required By Law to perform a function or activity on behalf of Covered Entity or provide a service described in the definition of business associate at §164.103, Covered Entity may waive the mandatory termination authorization otherwise required by HIPAA, if such authorization is inconsistent with the statutory obligations of Covered Entity or Business Associate.
- 5.3 Termination by Business Associate. If Business Associate makes the determination that a material condition of performance has changed under the Agreement or this Business Associate Agreement, or that Covered Entity has breached a material term of this Business Associate Agreement, Business Associate may provide thirty (30) days' notice of its intention to terminate this Business Associate Agreement. Business Associate agrees, however, to cooperate with Covered Entity to find a mutually satisfactory resolution to the matter prior to terminating and further agrees that, notwithstanding this provision, it shall not terminate this Business Associate Agreement so long as the Agreement is in effect.
- 5.4 Automatic Termination. This Business Associate Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the related Agreement dated between the Parties.
- 5.5 Effect of Termination. Upon the event of termination pursuant to this Section 5, Business Associate agrees to return or destroy (which for purposes of this Business Associate Agreement shall mean destroy all backup tapes and permanently deleting all Electronic Protected Health Information) all Covered Entity's Protected Health Information pursuant to 45 C.F.R. §164.504(e)(2)(J), if it is feasible to do so. Prior to doing so, the Business Associate further agrees to recover any Covered Entity's Protected Health Information in the possession of its subcontractors or agents. If it is not feasible for the Business Associate to return or destroy said Protected Health Information, the Business Associate will promptly notify the Covered Entity in writing. Said notification shall include: (i) a statement that the Business Associate has determined that it is infeasible to

return or destroy Covered Entity's Protected Health Information in its possession, and (ii) the specific reasons for such determination. Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Business Associate Agreement to the Business Associate's use and/or disclosure of any Covered Entity's Protected Health Information retained after the termination of this Business Associate Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of Covered Entity's Protected Health Information infeasible. If it is infeasible for the Business Associate to obtain, from a subcontractor or agent any Covered Entity's Protected Health Information in the possession of the subcontractor or agent, the Business Associate must promptly provide a written explanation to the Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Business Associate Agreement to the subcontractors' and/or agents' use and/or disclosure of any Covered Entity's Protected Health Information retained after the termination of this Business Associate Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of Covered Entity's Protected Health Information infeasible.

6. CONFIDENTIALITY

- 6.1 Confidentiality Obligations. This Section 6.1 shall apply to the extent that the confidentiality obligations contained herein do not conflict with the Agreement.

In the course of performing under this Business Associate Agreement, each Party may receive, be exposed to or acquire Confidential Information including but not limited to, all information, data, reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer data base or computer readable form, as well as any information identified as confidential ("Confidential Information") of the other Party. For purposes of this Business Associate Agreement, "Confidential Information" shall not include Covered Entity's Protected Health Information, the security of which is the subject of this Business Associate Agreement and is provided for elsewhere. The Parties including their employees, agents or representatives (i) shall not disclose to any third party the Confidential Information of the other Party except as otherwise permitted by this Business Associate Agreement, (ii) only permit use of such Confidential Information by employees, agents and representatives having a need to know in connection with performance under this Business Associate Agreement, and (iii) advise each of their employees, agents, and representatives of their obligations to keep such Confidential Information confidential. Notwithstanding anything to the contrary herein, each Party shall be free to use, for its own business purposes, any ideas, suggestions, concepts, know-how or techniques contained in information received from each other that directly relates to the performance under the Agreement. This provision shall not apply to Confidential Information: (a) after it becomes publicly available through no fault of either Party; (b) which is later publicly released by either Party in writing; (c) which is lawfully obtained from third parties without restriction; or (d) which can be shown to be previously known or developed by either Party independently of the other Party.

7. MISCELLANEOUS

- 7.1 Business Associate. For purposes of this Agreement, “Business Associate” shall mean the named Business Associate herein. In the event that Business Associate is otherwise also a Covered Entity under HIPAA, that entity may appropriately designate a health care component of the entity, pursuant to 45 C.F.R. §164.504(a), as Business Associate for purposes of this Business Associate Agreement.
- 7.2 Regulatory References. A reference in this Business Associate Agreement to a section in HIPAA means the section as in effect or as amended or modified from time to time, including any corresponding provisions of subsequent superseding laws or regulations.
- 7.3 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 2.1, 4, 5.5, 7, and 8 solely with respect to Covered Entity’s Protected Health Information Business Associate retains in accordance with Section 5.5 because it is not feasible to return or destroy such Covered Entity’s Protected Health Information, shall survive termination of this Business Associate Agreement indefinitely. In addition, Section 3 shall survive termination of this Business Associate Agreement, provided that Covered Entity determines that Covered Entity’s Protected Health Information being retained pursuant to Section 5.5 herein constitutes a Designated Record Set.
- 7.4 Amendments. This Business Associate Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- 7.5 Waiver. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.
- 7.6 Interpretation. Any ambiguity in this Business Associate Agreement shall be interpreted to permit compliance with HIPAA.
- 7.7 No Third Party Beneficiaries. Nothing express or implied in this Business Associate Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.
- 7.8 Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party’s address given below, and/or (other than for the delivery of fees) via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

Att:

Phone:

Email:

If to Covered Entity, to:

The Valley Hospital
15 Essex Road
Paramus, NJ 07652
Attention:
Phone: (201)
Fax: (201) 291-6186

with a copy to:

Valley Health System
15 Essex Road, Suite 501
Paramus, New Jersey 07652
Attention: Nicole Brenner
Phone: (201) 291-6329
Fax: (201) 291-6186

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided.

- 7.9 Counterparts; Facsimiles. This Business Associate Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof, or e-mail delivery of documents in Adobe PDF or similar static image format, shall be deemed to be originals.
- 7.10 LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. THE PARTIES HEREBY AGREE AND ACKNOWLEDGE THAT ANY COSTS OR EXPENSES REASONABLY AND ACTUALLY INCURRED BY CLIENT

IN INVESTIGATING AND/OR RESPONDING TO BUSINESS ASSOCIATE'S BREACH OF THIS BUSINESS ASSOCIATE AGREEMENT, INCLUDING BUT NOT LIMITED TO COSTS AND EXPENSES FOR CREDIT MONITORING, PUBLISHING AND DISSEMINATING NOTICES TO PATIENTS, AND INVESTIGATORY AND CRISIS MANAGEMENT COSTS AND EXPENSES, SHALL BE DEEMED DIRECT DAMAGES AND NOT INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

7.11 Indemnification. Business Associate agrees to defend, indemnify and hold harmless Covered Entity and its trustees, officers, directors and employees from any claims, demands or legal proceedings (including without limitation the costs, expenses and reasonable attorney's fees incurred in connection with the defense of any such matter) which may be made or brought against Covered Entity by any third party, provided that such claim or claims arise from the breach of this Business Associate Agreement by Business Associate, its employees, workforce, agents and/or subcontractors, whether such breach be willful, fraudulent or negligent.

8. DEFINITIONS

8.1 All capitalized terms that are used but not otherwise specifically defined in this Business Associate Agreement shall have the definitions ascribed to them under HIPAA.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf.

VALLEY HEALTH SYSTEM

BUSINESS ASSOCIATE:

**VALLEY PHYSICIAN SERVICES, PC
VALLEY MEDICAL SERVICES, PC**

VALLEY PHYSICIAN SERVICES, NY, PC:

By: _____

By: _____

Print Name: Nicole Brenner

Print Name: _____

Print Title: Compliance Manager

Print Title: _____

Date: _____

Date: _____