

MIDDLESEX HEALTH AMENDMENT TO SERVICE TERMS AND CONDITIONS

This Amendment is by and between Middlesex Health System of Middletown Connecticut ("Middlesex Hospital") and _____ ("Company") with offices at _____

Recitals

- A. Middlesex Hospital and Company has already entered into, or about to concurrently enter into an agreement for services.
- B. The parties to the underlying service agreement desire to, and hereby do, amend that service agreement to incorporate the terms and conditions set forth below.

Now, Therefore, in consideration of the mutual promises set forth below and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Agreement Between Parties; Conflict.** These Terms and Conditions shall be deemed incorporated into and made a part of that certain agreement (the "Agreement") by and between Company and Middlesex Hospital. In the event of a conflict between these Terms and Conditions and the Agreement, these Terms and Conditions shall control and be deemed to supersede all such inconsistent provisions in the Agreement.

2. **Changes.** No modification, amendment, or change of these Terms and Conditions shall be valid unless in writing and signed by both parties.

3. **Insurance.**

Throughout the term of this Agreement, the parties shall each maintain, at its own expense, professional liability insurance and comprehensive general liability insurance to meet its obligations hereunder providing continuous coverage on a "claims-made" or "occurrence basis" with respective limits of no less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate.

Also, throughout the term of this Agreement, the parties shall each maintain, at its own expense, on behalf of itself a program of workers' compensation insurance covering its employees with limits consistent with regulatory requirements.

Each party shall provide to the other party a certificate of insurance evidencing the above-stated coverage, upon execution of this Agreement and promptly following any modification of coverage or term of coverage.

4. **Indemnification.**

Company agrees to indemnify and hold Middlesex Hospital, its officers, directors, employees and agents harmless from and against any and all claims, liabilities, losses, damages, expenses, and actions, including reasonable attorney's fees, which result from, are caused by, or

are related to: (a) Company's violation of federal, state or local statutes, regulations or ordinances (including without limitation, the Health Insurance Portability and Accountability Act of 1996, also known as "HIPAA"); and/or (b) the acts or omissions of Company, its officers, directors, agents, employees, or representatives; and/or (c) the breach of the Agreement by Company, its officers, directors, agents, employees, or representatives; and/or (d) any breach of warranty by Company; and/or (e) the negligence or willful misconduct of the Company, its officers, directors, agents, employees, or representatives provided, however, that if a third party claim is brought against both parties and alleges that Middlesex Hospital contributed in any way to the third party's harm or damage, and both parties are determined to be partially at fault for such claim, then Company shall not be obligated to indemnify or defend the Middlesex Hospital, and each party shall be left to defend its own interests and shall pay its proportionate share of such liability. Middlesex Hospital shall notify Company of any third party claim made against it promptly after receipt of a summons and complaint or a formal demand letter from an attorney seeking damages if Middlesex Hospital intends to seek indemnity with respect to such claim under this paragraph. Company shall have the right to undertake, conduct and control, through counsel of its own choosing, the defense and settlement of any such claim; provided, however, that Company shall not settle a claim with an admission of guilt or wrongdoing by Middlesex Hospital without the consent of Middlesex Hospital. Middlesex Hospital shall have the right to be represented by counsel of its own choosing, but at its own expense. So long as the Company is contesting any such claim in good faith, Middlesex Hospital shall not pay or settle such claim. Middlesex Hospital shall provide reasonable assistance to Company in the defense of such claim or action at Company's request and reasonable expense.

Middlesex Hospital agrees to indemnify and hold Company, its officers, directors, employees and agents harmless from and against any and all claims, liabilities, losses, damages, expenses, and actions, including reasonable attorney's fees, which result from, are caused by, or are related to: (a) Middlesex Hospital's violation of federal, state or local statutes, regulations or ordinances (including without limitation, the Health Insurance Portability and Accountability Act of 1996, also known as "HIPAA"); and/or (b) the acts or omissions of Middlesex Hospital, its officers, directors, agents, employees, or representatives; and/or (c) the breach of the Agreement by Middlesex Hospital, its officers, directors, agents, employees, or representatives; and/or (d) the negligence or willful misconduct of Middlesex Hospital, its officers, directors, agents, employees, or representatives provided, however, that if a third party claim is brought against both parties and alleges that Company contributed in any way to the third party's harm or damage, and both parties are determined to be partially at fault for such claim, then Middlesex Hospital shall not be obligated to indemnify or defend the Company, and each party shall be left to defend its own interests and shall pay its proportionate share of such liability. Company shall notify Middlesex Hospital of any third party claim made against it promptly after receipt of a summons and complaint or a formal demand letter from an attorney seeking damages if the Company intends to seek indemnity with respect to such claim under this paragraph. Middlesex Hospital shall have the right to undertake, conduct and control, through counsel of its own choosing, the defense and settlement of any such claim; provided, however, that Middlesex Hospital shall not settle a claim with an admission of guilt or wrongdoing by Company without the consent of the Company. The

Company shall have the right to be represented by counsel of its own choosing, but at its own expense. So long as Middlesex Hospital is contesting any such claim in good faith, the Company shall not pay or settle such claim. The Company shall provide reasonable assistance to Middlesex Hospital in the defense of such claim or action at Middlesex Hospital's request and reasonable expense.

This Section shall survive termination of the Agreement.

5. **Connecticut Law.** The laws of the State of Connecticut will govern the interpretation and construction of this Agreement and the acts or omissions of the parties pursuant to it, without reference to conflicts of law principles. Company expressly consents to the personal jurisdiction of the state courts located in Middlesex Judicial District for the State of Connecticut, and to the United States District Court for the District of Connecticut.

6. **Assignment.** Neither party shall assign this Agreement or any rights hereunder without the prior written consent of the other party; provided, however, that Middlesex Hospital may assign this Agreement in the event that it is acquired by or merges with another entity, or if all or substantially all of its assets are transferred to another entity.

7. **Payment.** Payment terms are net sixty (60) days upon receipt of the invoice. Company may charge Middlesex Hospital with interest on fees not paid to Company within ninety (90) days of the receipt of the invoice. The interest rate charged shall not exceed the maximum amount allowable under law.

8. **Termination.**

- a. Middlesex Hospital has the right to terminate all or part of the Agreement for its convenience and without penalty by providing Company with thirty (30) days prior written notice. If Hospital terminates the Agreement under this provision, Company shall, within ten (10) days, refund all monies prepaid to Company by Hospital for remaining term of the agreement on a prorated basis. Following this, Hospital shall have no further liability to Company.
- b. If the Agreement is terminated by either party for any reason whatsoever, including but not limited to a default by Middlesex Hospital, or if the Agreement is not renewed, within three (3) business days following such termination date, the Company shall deliver to Middlesex Hospital all proprietary and confidential data and other information belonging to or obtained from Middlesex Hospital.

9. **Default**

(a) The Company shall be in default if it (i) fails to carry out any of its obligations under the Agreement, including this Amendment, and such failure continues for a period of thirty (30) days, or (ii) is dissolved, liquidated or ceases doing business for thirty (30) days or more, makes an assignment for the benefit of creditors, commences, or has commenced against it,

bankruptcy proceedings under the Federal Bankruptcy Code or under any other insolvency law, or has a trustee, receiver, custodian, or liquidator named for the purpose of general administration of such party's property.

(b) If the Company is in default hereunder or under the Agreement, Middlesex Hospital may at its option: (i) terminate the Agreement and all of Middlesex Hospital's obligations thereunder; and (ii) exercise any and all rights and remedies available to it under the Agreement or at law or in equity.

10. **Confidentiality.**

(a) Company acknowledges and agrees that in the course of performing services hereunder, Company will obtain certain information relating to Middlesex Hospital's business, programs, internal practices, medical staff, and patients ("Confidential Information"). Company agrees that during the term of the Agreement and thereafter such Confidential Information is the sole and exclusive property of Middlesex Hospital, and Company agrees not to use any such information for Company's benefit or for the benefit of others, and not to disclose any such information for any purpose except as required by law. In the event that Company will have access to "Protected Health Information" as defined by 45 Code of Federal Regulations, parts 160 and 164, Company shall execute Middlesex Hospital's standard Business Associate Agreement. Should the Company decline to execute Middlesex Hospital's Business Associate Agreement, Middlesex Hospital may terminate this Agreement and any underlying service agreements immediately and without further liability to Company.

(b) Improper disclosure or use of any such Confidential Information by Company will result in the immediate termination of this Agreement by Middlesex Hospital. Company acknowledges and agrees that Company's breach of Section 10 (a) hereof will result in irreparable harm to Middlesex Hospital. Accordingly, Middlesex Hospital shall be entitled to all remedies available to it at law or in equity for breach of Section 10 (a) including, without limitation, injunctive relief.

This Section shall survive termination of the Agreement.

11. **Independent Contractor.** The Agreement does not create any agency relationship between Middlesex Hospital and Company, and both parties are acting hereunder as independent contractors. The parties shall be and act as independent Contractors, under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, or employment between the parties. Each party acknowledges and agrees that it neither has nor will give the appearance or impression of having any legal authority to bind or commit the other party in any way. Neither party grants the other any right to bind it except as otherwise expressly agreed in writing. Each party shall be fully liable for all workers' compensation premiums and liability insurance, federal, state and local withholding taxes or charges with respect to its respective employees.

12. **Compliance.** Company represents and warrants that it nor any of its employees or representatives performing services under this Agreement has ever been (1) convicted of a criminal offense related to healthcare and/or related to the provision of services paid for by Medicare, Medicaid or another federal health care program; (2) excluded or debarred from participating in Medicare, Medicaid, or other federal health care programs or (3) otherwise sanctioned by the federal government, including being listed on the General Services Administration's Excluded Party Listing System. It agrees that it will notify Middlesex Hospital immediately in the event any of the above becomes untrue at any time during the term of this Agreement, or in the event the Company is under an investigation that could lead to such exclusion.

Middlesex Hospital may terminate this Agreement immediately in the event that Company or one of its employees or representatives performing services under this Agreement is (1) convicted of a criminal offense related to healthcare and/or related to the provision of services paid for by Medicare, Medicaid or another federal health care program; (2) excluded or debarred from participating in Medicare, Medicaid, or other federal health care programs or (3) otherwise sanctioned by the federal government, including being listed on the General Services Administration's Excluded Party Listing System. If one of the Company's employees or representatives performing services under this Agreement is convicted, excluded or debarred as described above, Middlesex Hospital may, in its sole discretion and as an alternative to termination of this Agreement, require Company to replace such employee or representative with another appropriate employee or representative.

13. **Notices.** Whenever notice must be given under the provisions of this Agreement, such notice must be in writing and will be deemed to have been duly given by (a) hand delivery; or (b) certified mail, return receipt requested, postage prepaid; or (c) fax transmittal (with written confirmation of receipt), provided that a copy is also mailed by registered mail, return receipt requested, addressed to the parties at their respective address set forth in this Agreement.

14. **Force Majeure.** No party shall be liable for delay in performance hereunder due to forces beyond its control, including but not limited to acts of God, fires, strikes or other labor disputes, acts of war, acts of terrorism, or intervention by any governmental authority, and each party shall take steps to minimize any such delay. Notwithstanding any of the foregoing, in the event that Company experiences one or more Force Majeure event resulting in delays in performance of thirty (30) days or more in the aggregate, Middlesex Hospital may immediately terminate this Agreement and shall have no further liability to Company.

15. **Severability.** In the event that any portion of these Terms and Conditions are held to be unenforceable, the remainder of the provisions shall continue in full force and effect. In such event, the parties shall, in good faith, modify these Terms and Conditions so as to achieve as much as can be achieved of the provision that was held unenforceable.

16. **Business Standards.** Company agrees to abide by the Standards for Business Ethics and Conduct set forth by Middlesex Health Systems which can be found on the internet at <https://middlesexhealth.org/middlesex-and-the-community/for-vendors-and-suppliers/standards-of-business-ethics-and-conduct>.

17. **Entire Agreement.** This Amendment and the Master Agreement constitutes the full, complete and only agreement between the parties and their affiliates with respect to the services defined on the Master Agreement and supersedes conduct, dealings or previous agreements, representations or understandings either oral or written between the parties and their affiliates.

18. **Counterparts, Facsimile and PDF Image Copy.** This Amendment may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and all of which when taken together shall constitute one and the same Agreement. The Parties hereto agree that this Agreement may be transmitted between them or their respective attorneys by facsimile or PDF image copy. The Parties intend that faxed or PDF signatures constitute original signatures and that an Agreement containing the signatures (original, facsimile or PDF) of all the parties is binding on the parties once sent via facsimile or via electronic mail to the opposing counsel.

ACCEPTED BY:

Company name

Signature

Print Name

Title

Date

Middlesex Hospital

Signature

Print Name

Title

Date

Version Date 6/2022