

PREScription DRUG SERVICES AGREEMENT

THIS PRESCRIPTION DRUG SERVICES AGREEMENT ("Agreement") is entered into by and between Matrix Quality Care, Inc. d/b/a Araya, a New York corporation ("Araya") and Montgomery County ("Client") (individually a "Party" and collectively the "Parties").

RECITALS

- A. Araya is a pharmacy benefit manager that, provides, manages and administers prescription drug programs, including the maintenance of a nationwide network of pharmacies, claims administration, prescription drug management, rebate services, utilization reports and other pharmacy management services; and
- B. Client is an employer and plan sponsor (hereinafter "Plan Sponsor") that offers coverage of medications and other pharmacy related products to employees and their dependents eligible for the employer sponsored health plan; and
- C. Client and Araya hereby desire that Araya provide a prescription drug benefit program to Client, including claims administration, retail pharmacy, mail order pharmacy and specialty pharmacy services and rebate management with respect to the Plan, in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, the parties agree as follows:

ARTICLE I DEFINITIONS

- I. Capitalized terms shall have the meanings set forth below:

"Administrative Fees" mean the Base Administrative Fee and any other fees described in Exhibit A attached hereto and made a part hereof.

"Agreement" **"hereof"** and **"hereunder"** and words of similar import, refer to this Prescription Drug Services Agreement, which constitutes the entire understanding among the Parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements and understandings relative to such matter, including all exhibits hereto, as it may be amended from time to time in accordance herewith.

"AWP" or **"Average Wholesale Price"** means the Average Wholesale Price of a prescription drug as determined by Medi-Span or a similar service recognized in the prescription drug industry and selected by Araya on or before the date the medication is dispensed.

"Base Administrative Fee" means the fee per Claim processed set forth in Exhibit A.

"Brand Name Drugs" means all single-sourced brand and multisource brand drugs determined by information from Medi-Span's Master Drug Database (or such other nationally recognized source, as reasonably determined by Araya).

"Claim" or **"Claims"** mean(s) any transmission of information submitted by a Participating Pharmacy to Araya for drugs or other items dispensed, or intended to be dispensed, by such Participating Pharmacy to a Member.

"Claims Processing" means the process followed to pay, settle or reject one or more Claims, whether through their full payment, partial payment, denial of payment, or a combination thereof.

"Copayment" means that portion of the charge for each Formulary Product dispensed to a Member that is the responsibility of such Member (e.g., copayment, coinsurance, cost sharing, and/or deductibles under initial coverage limits and up to annual out-of-pocket thresholds).

"Day(s)" means Monday through Friday excluding United States holidays as observed by the Federal Reserve.

"Effective Date" means the date upon which Araya executes this agreement as set forth on the signature page of this agreement.

"Eligibility Files" means the list submitted by Client to Araya in reasonably acceptable electronic or other format indicating persons eligible for drug benefit coverage services under the Plan.

"ERISA" means the Employee Retirement Income Security Act, as amended, 29 U.S.C. §1001 et seq.

"Formulary" means those prescription drugs, supplies, specialty products and other items that are covered under the Member's Prescription Drug Program, as indicated in the Plan Design Summary.

"Generic Drug" means a multisource generic drug determined by information from Medi-Span's Master Drug Database (or such other nationally recognized source, as determined by Araya).

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended.

"Ingredient Cost(s)" means the cost of a Formulary Product charged to the client excluding (i) fees paid to the Participating Pharmacy for dispensing the Formulary Product, (ii) Copayments, and (iii) any applicable taxes.

"Initial Term" means the term described in Section 7.1 of this Agreement.

"Mail Order Pharmacy Program" means the program under which Members may purchase Formulary products from an Araya contracted mail order pharmacy for home delivery upon verification of eligibility and payment of the applicable Copayment, and the claim is submitted by the Participating Pharmacy to Araya for payment in accordance with this Agreement and the applicable Participating Pharmacy agreement.

"Member" means each person who is eligible (as determined solely by Client on behalf of a Plan) to receive Formulary Products under a Plan.

"Member Submitted Claim" means (a) a Claim submitted by a Member for Formulary Products dispensed by a pharmacy other than a Participating Pharmacy, or (b) a Claim for Formulary Products filled at a Participating Pharmacy for which the Member paid the entire cost of the Claim.

"NCPDP" means the National Council for Prescription Drug Programs.

"Paid Claim" means a claim that results in a prescription being dispensed to a member

"Participating Pharmacy" means any licensed pharmacy, including retail, long-term care, home infusion, mail order, specialty and other dispensers, with which Araya, its agent or Client has executed an agreement to provide Formulary Products to Members.

"Plan Cost" means Ingredient Cost plus fees billed to the client for dispensing the Formulary Product and any applicable taxes, less any member copayment.

"Plan Design Summary or PDS" means any standard Araya document or form, which when completed and signed by Client, will describe the essential benefit elements and coverage rules adopted by Client for its Prescription Drug Program.

"Preferred Drug List" means a list of prescription drugs and preferred products approved by Client, which prescribing practitioners are encouraged to prescribe, consistent with their professional medical judgment and applicable medical and pharmacy laws and procedures. This list must be adopted by Client to be eligible for participation in the Preferred Drug Program.

"Preferred Drug Program" means the program by which clients receive a percentage of the rebates collected by Araya pursuant to manufacture contracts directly attributable to single source brand drug utilization by Members.

"Prescription Drug Program" means the prescription drug services and benefits specified by Client that are available to a Member under the Member's Plan and this Agreement.

“Proprietary Information” means any reporting and system applications, (web-based and other media), and system formats, databanks, clinical and Formulary management operations and programs and manuals, information concerning Rebates prescription drug evaluation criteria, drug choice management, drug pricing information, and all information provided by either Party that is not generally known to the public prior to or during the term of this Agreement, whether of a technical, business or other nature (including, without limitation, trade secrets, materials, outlines, diagrams, flow-charts, techniques, models, software code formats, know-how regardless of whether any such information is marked or otherwise identified in writing as confidential, and information relating to the technology, customers, business plans, processes, promotional and marketing activities, finances and other business affairs of such Party).

“Rebates” means retrospective payments to Araya, or otherwise retained by Araya, pursuant to the terms of a contract negotiated independently by Araya with a pharmaceutical manufacturer, and directly attributable to the utilization of single source brand, prescription drugs by Members.

“Rebateable Products(s)” means those prescription drugs, supplies, specialty products and other items that are included in the Formulary and are eligible for Rebates under the terms of the manufacturer rebate agreements entered into by Araya. The following are not rebateable claims: (i) cosmetic drugs, (ii) appliances, devices, bandages, heat lamps, braces, splints, and artificial appliances, (iii) health and beauty aids, cosmetics and dietary supplements, (iv) over the counter products other than those that are were communicated by Client as being covered in the utilization and formulary information provided to Araya in the proposal process; (v) biosimilar drugs, (vi) Member Submitted Claims, (vii) Medicaid subrogation claims, (viii) secondary claims, (ix) claims older than 180 days, (x) claims through Sponsor-owned, university, long term care, or 340b pharmacies, or pharmacies located on premises of a Sponsor; (xi) Medicaid fee-for services claims, , and (xii) claims pursuant to a 100% Member Copayment plan (collectively, the “Exclusions”). These Exclusions are not eligible for the rebate amounts stated in this document.

“Renewal Term” means the term as described in Section 7.1 of this Agreement.

“Retail Pharmacy Program” means the program under which Members may purchase Formulary Products from a community pharmacy upon verification of eligibility and payment of the applicable Copayment, and the claim is submitted by the Participating Pharmacy to Araya for payment in accordance with this Agreement and the applicable Participating Pharmacy agreement.

“Termination Date” means such date as described in Section 7.4 of this Agreement.

ARTICLE II ESTABLISHMENT OF THE PRESCRIPTION DRUG PROGRAM

- 2.1 **Exclusivity.** Client agrees to utilize Araya as its sole provider of those prescription benefit management services described in Exhibit A during the term of this Agreement (the “Services”).
- 2.2 **Client responsibility.** Client will promptly furnish, in a mutually acceptable format, all information necessary for Araya to render the services set forth herein. Such information will include, but is not limited to:
 - (a) An Eligibility File and subsequent timely additions and deletions to such file as changes occur. Araya agrees to load eligibility files within 4 business hours (*i.e.* Araya’s normal hours of operation) of receipt of said file. Client will be responsible for all Claims during the period of the Plan Member’s eligibility as indicated in the Eligibility File, until the earlier of Araya’s processing of any changes submitted by Client or the passage of 4 business hours after receipt of such changes. Client may send retroactive eligibility updates, but client will remain responsible for payment of any Claims approved for the Member until Araya processes such eligibility updates.
 - (b) Prior to the provision of any services under this Agreement with respect to a Plan, Client will submit completed PDS with respect to such Plan, certifying that it accurately depicts the pharmacy benefit provisions of the Plan. Client is solely responsible for timely communication of the terms of, and changes to, a Plan to the Plan’s Members prior to the effective date of such provisions. Client shall notify Araya in the event of change to benefit design features of a Plan after initial setup, including but not limited to changes in Copayments, Formulary or prior

authorization requirements in writing, via Araya's standard benefit change forms at least forty (40) days prior to the effectiveness of such changes. Client will give Araya at least forty (40) days prior written notice if a Plan will cease to be subject to this Agreement.

ARTICLE III ARAYA'S SERVICES

- 3.1 **Pharmacy Network.** Araya contracts with Participating Pharmacies, which are independent contractors, to provide prescription drugs and related products and services with respect to the Prescription Drug Program. Araya will maintain a network of Participating Pharmacies necessary for the reasonable availability to Plan Members during the Term. Araya maintains multiple networks tailored to the specific needs of its clients. Such networks are subject periodic change to capitalize on certain operational efficiencies or other benefits and as necessary to reflect changes in contractual arrangements with the Participating Pharmacies. Araya will notify Client of any changes that would materially adversely affect Member access to Participating Pharmacies. Araya shall require Participating Pharmacies to comply with Araya's terms and conditions applicable to participation in the Retail Pharmacy Program or Mail Order Pharmacy Program, as well as all applicable state board of pharmacy rules and regulations. Araya does not direct or exercise any control over the professional judgment exercised by any pharmacist in dispensing prescriptions or other pharmaceutical related services.
- 3.2 **Claims Processing.** Araya will provide Claims Processing services for Formulary Products dispensed by a Participating Pharmacy consistent with the applicable standard transaction rules required under HIPAA. When applicable, Araya shall provide claims processing for Member Submitted Claims in accordance with Araya rules. Client shall have the final responsibility for all decisions with respect to coverage of a Claim and the benefits allowable under the Plan, including determining whether any rejected or disputed Claim shall be allowed.
- (a) Payment to Providers. Claims will be processed and adjudicated based on the terms and conditions contracted with each Participating Pharmacy by Araya or Araya's designated network subcontractor.
 - (b) Coordination of Benefits. Araya will coordinate benefits with entities providing other prescription drug coverage based on information provided by Client.
 - (c) Drug Utilization Review. Araya will provide concurrent drug utilization review services through edits applied during Claims Processing in order to assist the dispensing pharmacist and prescribing physician in identifying potential drug interactions, incorrect prescriptions or dosages, and certain other circumstances that may be indicative of inappropriate prescription drug usage. Araya's utilization review services are not intended to substitute for the professional judgment of the prescriber, the dispensing pharmacist or any other health care professional providing services to the Member. Client or its third party designee (as applicable) will have the final responsibility for all decisions with respect to coverage of a Claim and the benefits allowable under the Plan, including determining whether any rejected or disputed claim will be allowed.
 - (d) Prior Authorization. Araya shall provide prior authorization online services as requested and directed by Client on the PDS. See Exhibit A for charges. Prior authorized drugs must meet approved guidelines ("Guidelines") before they are deemed to be Formulary Products. Client authorizes coverage for an otherwise excluded use in the event of co-morbidities, complications and other factors not otherwise expressly set forth in the Guidelines. In conducting prior authorization online services, Araya will apply only the Guidelines and may rely entirely upon information about the Member and the diagnosis of the Member's condition provided to it from sources deemed reliable to Araya. Araya will not undertake to determine medical necessity, to make diagnoses or substitute Araya's judgment for the professional judgment and responsibility of the physician.
- 3.3 **Program Operations.**
- (a) Basic Program Reporting. Araya shall provide Client with the reports listed on Exhibit A.

- (b) Claims Data Feeds. Upon Client's written request, Araya shall provide regular prescription Claims data in an agreed upon format(s) for no additional charge to Client and Client's vendors for disease management, flexible savings account and other "payment", "treatment" and "healthcare operations" purposes (as defined under HIPAA). Araya disclaims any liability or responsibility related to the disclosure to, and use of such Claims data by Client or Client's vendors when such disclosure was requested by Client.
 - (c) Claims Data Retention. Araya will maintain and make available to Client upon request, Client's Claims data supporting invoices for Formulary Products adjudicated by Araya during the term of this Agreement for a period of three (3) years; provided that after expiration of the retention period, Araya shall dispose of such data in accordance with its standard policies and applicable state and federal law.
 - (d) Client Audits. Provided that this Agreement has been duly executed by Client and Client's account does not reflect a delinquent balance at the commencement of or during an audit, Client may audit the prescription management services provided and all fees and charges under this Agreement for a maximum period of twenty-four (24) months prior to the commencement of the audit. Any audit by Client may be conducted once annually, upon adequate prior written notice to Araya and during normal business hours. Client shall bear its own costs and reimburse Araya for its reasonable costs associated with any audit. Client may use an independent auditor ("Auditor"), so long as such auditor does not have a conflict of interest with Araya or Araya's subcontractor. In such case, Araya shall have the right to reject the Auditor at its discretion and Client will assign another Auditor. Auditors must execute a mutually acceptable standard confidentiality agreement with Araya prior to commencement of the audit. Client's authorization to Auditor to perform an audit shall constitute Client's direct authorization to Araya to disclose protected health information (as defined under HIPAA) to the Auditor.
 - (e) Liability Insurance. Araya shall maintain such policies of commercial general liability, errors and omissions, and other insurance of the types and in amounts customarily carried by their respective businesses with the Client named as an additional insured. The general liability and errors and omissions policies shall have coverage limits on not less than \$1 million per claim and \$3 in the aggregate. Proof of such insurance shall be available upon request. If coverage is written on a claims-made basis, the insured party shall provide evidence of continuing coverage for three (3) years beyond termination of this Agreement. Araya does not maintain liability insurance on behalf of any Participating Pharmacy, but contractually requires such Participating Pharmacies to maintain commercial liability and professional liability insurance of not less than \$1 million/\$3 million or, when deemed acceptable by Araya, to have in place a self-insurance program.
 - (f) Complaints and Grievances. Any complaints or grievances Client receives from Members with respect to services provided pursuant to this Agreement will be resolved in accordance with Client's procedures. Araya agrees to timely cooperate and require Participating Pharmacies to cooperate in the resolution of Member complaints and grievances. Araya shall provide Client with information regarding Member complaints and grievances and support Client in the implementation of corrective action plans.
- 3.4 **Rebates.** Client will provide Araya with advance notice of each Plan that will participate in the Preferred Drug Program. If a Plan participates in the Preferred Drug Program, Araya will distribute to Client one hundred percent (100%) of the Rebates actually collected by Araya for qualifying Rebateable Products under such Plan within 180 days of the last day of the calendar quarter; provided, however, that Client shall not be entitled to Rebates attributable to any group of Members for which Client or the Plan funds less than 50% of the costs of Rebateable Products under the Plan.

ARTICLE IV PAYMENT TERMS

- 4.1 **Billing.** Araya will email Client with invoices 4 times per month for claims reimbursement amounts (*i.e.* Plan Costs) and other Administrative Fees for services (collectively the "Fees") provided by Araya under the Prescription Drug Program, in accordance with the Program Pricing Terms, Services and Fees Schedule set forth in Exhibit A.

- 4.2 **Payment Method.** Client agrees to pay the Fees to Araya by wire or ACH transfer, debit, other electronic method or check within twenty five (25) business days from the date of Client's receipt of the Araya invoice. If Client disputes the amount of any invoice, Client shall pay the full amount invoiced and provide Araya with written notice of the disputed amount, which the Parties will subsequently work to resolve.

ARTICLE V USE OF RECORDS; CONFIDENTIALITY

- 5.1 **HIPAA.** In the event Client is a "covered entity," as that term is defined under HIPAA, the Parties shall execute the Business Associate Agreement annexed to this Agreement as Exhibit B, which is hereby incorporated in this Agreement by reference. If Client is not a covered entity, Araya shall safeguard the privacy and security of Member information to the same extent it does for members of clients which are covered entities.
- 5.2 **Proprietary Information.** Each Party agrees that they will not use the other's Proprietary Information or disclose it to any third party at any time during or after termination of this Agreement, except as specifically permitted by this Agreement or upon prior written consent. Upon termination of this Agreement, each Party shall cease using the other's Proprietary Information, and all such information shall be returned or destroyed upon the owner's direction.
- (a) Araya agrees and covenants to treat and maintain as confidential all of Client's Proprietary Information. Araya further acknowledges, agrees and covenants that any change or adaptation made to any of Client's Proprietary Information during the term of this Agreement for any reason will remain the sole property of Client.
- 5.3 **Remedies.** The Parties agree that the use or disclosure of any confidential information in a manner inconsistent with this Agreement would cause irreparable injury for which money damages may not be a sufficient remedy. Accordingly, the Client shall be entitled to seek injunctive relief, without being required to prove irreparable injury, from a court of competent jurisdiction for the threatened or actual breach of this Article V. The Parties further agree that if an application is made for injunctive relief, Araya waives any requirement for the posting of a bond or security in connection with such remedy. The injunctive remedy set forth herein is not exclusive, but is in addition to all other remedies available at law or in equity.

ARTICLE VI COMPLIANCE WITH LAW

- 6.0 Intentionally omitted

ARTICLE VII TERM AND TERMINATION; DEFAULT AND REMEDIES

- 7.1 **Term.** This Agreement be in effect 01/01/2023 through 12/31/23
- 7.2 **Termination.**
- (a) Breach or Default. Either Party may terminate this Agreement upon sixty (60) days written notice to the other Party if the other Party is in material breach of this Agreement and fails to cure such breach within such sixty (60) day period. If the amount of time commercially reasonable for the breach to be cured is longer than sixty (60) days, this Agreement may not be terminated by the non-breaching Party pursuant to this provision until such commercially reasonable period of time has elapsed; provided, however, that in no event shall such period exceed ninety (90) days.
- (b) Non-Payment or Failure to Fund. Noncompliance with payment terms will be considered a

material breach to this Agreement. Notwithstanding Section 7.2(b), Araya may suspend its performance hereunder and cease providing or authorizing provision of Formulary Products to Members thirty days after receipt of written notice by Client via certified mail if Client fails to pay Araya Plan Costs and Administrative Fees within fifteen days..

7.3 Remedies.

- (a) Remedies Not Exclusive. A Party's right to terminate this Agreement under Article VII shall not be exclusive of any other remedies available to the terminating Party under this Agreement or applicable law.
- (b) Force Majeure. Neither Party shall be liable in any manner for any delay to perform its obligations hereunder which are beyond a Party's reasonable control, including, without limitation any delay or failure due to strikes, labor disputes, riots, earthquakes, storms, floods or other extreme weather conditions, fires, expulsions, embargoes, war or other outbreak of hostilities, government acts or regulations, or the failure of carriers, suppliers, delivery services, or telecommunications providers to provide services necessary to enable a Party to perform its obligations hereunder;
- (c) Limitation of Liability. The Client shall not be liable to the Araya for any special, indirect, incidental, punitive, or consequential damages arising from or related to this Agreement, including bodily injury, death, loss of revenue, or profits or other benefits, and claims by any third party, even if Araya has been advised of the possibility of such damages. The foregoing limitation applies to all causes of action in the aggregate, including, without limitation, breach of contract, breach of warranty, negligence, strict liability, and any and all other torts
- (d) Indemnification. Araya shall indemnify, defend, and hold harmless the County, its affiliates, agents, officers, directors, and employees from any and all claims, liability, demands, losses arising out of injury to property or persons, including death, any causes of action, damages, lawsuits judgments, and any claim based on any statute, law, ordinance, code, or regulation arising out of, relating to, or sustained as a result of Araya's negligent acts or omissions or willful misconduct in connection with the provision of services under this Agreement. This includes any and all attorneys' fees costs and expenses associated with the foregoing.

- 7.4 Obligations upon Termination.** Client or its agent shall pay Araya in accordance with this Agreement for all Claims for Formulary Products dispensed and services provided to Client and Members on or before the effective date of termination ("Termination Date"). Claims submitted by Participating Pharmacies or Member Submitted Claims filed with Araya after the Termination Date shall be processed and adjudicated in accordance with a reasonably determined run-off plan. The Parties shall cooperate regarding the transition to a successor pharmacy benefit manager in accordance with applicable rules and/or regulations.

**ARTICLE VIII
MISCELLANEOUS**

- 8.1 Notice.** Any notice or document required or permitted to be delivered pursuant to this Agreement must be in writing and shall be deemed to be effective upon mailing and must be either (a) deposited in the United States Mail, postage prepaid, certified or registered mail, return receipt requested or (b) sent by recognized overnight delivery service in either case properly addressed to the other Party at the address set forth below, or at such other address as such Party shall specify from time to time by written notice delivered in accordance herewith:

To Araya: Araya
Attn: President
4 British American Blvd
Latham NY 12110

To Client: Montgomery County Executive

- 8.2 **Independent Parties.** No provision of this Agreement is intended to create or shall be construed to create any relationship between Araya and Client other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither Party nor any of their respective representatives, shall be construed to be the partner, agent, fiduciary, employee or representative of the other and neither Party shall have the right to make any representations concerning the duties, obligations or services of the other except as consistent with the express terms of this Agreement or as otherwise authorized in writing by the Party about which such representation is asserted. Araya further agrees that the Client shall not be liable for any payroll deductions, including but not limited to, U.S. Social Security taxes, Federal and/or State withholding taxes. Araya agrees to accept exclusive liability for complying with all applicable state and federal laws governing self-employed individuals including obligations such as payment of quarterly taxes, social security, disability and other contributions based on the fees paid to Araya under this Agreement. Araya agrees to indemnify and hold the Client harmless to the extent that they become obligated to pay any of the above taxes or incurs any similar liabilities.
- 8.3 **Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of and be enforceable by, the respective successors and assignees of the Parties hereto; provided, however, that this Agreement may not be assigned by Araya without the prior written consent of Araya.
- 8.4 **Integration; Amendments.** This Agreement constitutes the entire understanding of the Parties hereto and supersede any prior oral or written communication between the Parties with respect to the subject matter hereof. No modifications, alteration, or waiver of any term, covenant, or condition of this Agreement shall be valid unless in writing and signed by both Parties and the agents of the Parties who are authorized in writing.
- 8.5 **Choice of Law and Dispute Resolution.** This Agreement, the rights and obligations of the Parties hereto, and any claims or disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of New York (but not including the choice of law rules thereof or any provision that would impede the application of the Federal Arbitration Act). The exclusive means of disposing of any dispute arising under this Agreement shall be decided in a New York State Court of competent jurisdiction located within Montgomery County, New York. There shall be no right to binding arbitration. Pending final resolution of a dispute, Araya shall proceed diligently with performing the terms of this Agreement. Araya waives any dispute or claim not made in writing and received by the Client within thirty (30) days of the occurrence giving rise to the dispute or claim. The claim must be in writing for a sum certain and any money requested must be fully supported by all cost and pricing information.
- 8.6 **Severability.** In the event that any provision of this Agreement is invalid or unenforceable, such invalid or unenforceable provision shall not invalidate or affect the other provisions of this Agreement, which shall remain in effect and be construed as if such provision were not a part of the Agreement.
- 8.7 **Third Party Beneficiary Exclusion.** This Agreement shall not create any rights on behalf of Members against Araya or Client.
- 8.8 **Trademarks.** Each Party acknowledges each other Party's sole and exclusive ownership of its respective trade names, commercial symbols, trademarks, and service marks, whether presently existing or later established (collectively "Marks"). No Party shall use the other Party's marks in advertising or promotional materials or otherwise without the owner's prior written consent; provided, however, that the Parties may publicize the fact that Araya provides prescription benefit management services to Client.
- 8.9 **Survival.** Section 3.3(e) and Articles V and VII, as well as any provision of this Agreement which imposes an obligation that would naturally extend beyond the termination or expiration of this Agreement, shall survive the termination or expiration of this Agreement.
- 8.10 **Signatures.** Any documents required to implement the terms of this Agreement shall be signed by a representative of each Party with legal authority to bind the entity.

- 8.11 **Representations.** Each Party represents and warrants to the other Party that:
- (a) It has all requisite power and authority and has taken all action necessary to execute and deliver this Agreement and to consummate the transactions contemplated hereby;
 - (b) It has duly and validly executed and delivered this Agreement, and this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except to the extent that such enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or similar laws, now or hereafter in effect, relating to or affecting creditors' rights and to general principles of equity; and
 - (c) Neither the execution and the delivery by it of this Agreement nor the performance of its obligations hereunder violates or conflicts with any provision of any applicable law, its certificate of incorporation or bylaws, or any material agreement.
- 8.12 **Counterparts; Electronic Signatures.** The Parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. Delivery of an executed signature page of this Agreement by facsimile or electronic transmission will be effective as delivery of a manually executed counterpart of this Agreement.
- 8.13 **Joinder of Plan Sponsor.** The parties acknowledge that the Plan Sponsor is the ultimate beneficiary of the Services provided under this Agreement. Araya's obligations under this Agreement are explicitly conditioned on the execution of the Joinder Agreement annexed hereto as Exhibit C by the Plan Sponsor.
- 8.14 **Executory.** It is understood by and between the parties hereto that this Agreement shall be deemed executory only to the extent of the monies appropriated and available for the purpose of this Agreement and no liability on account thereof shall be incurred by the Client beyond monies appropriated and available for the purpose thereof. In no instance will the Client be obligated to make payments that are not appropriated and budgeted. Notwithstanding anything contained herein to the contrary, no default shall be deemed to occur in the event no funds or insufficient funds are appropriated and budgeted by either the Client, or are otherwise unavailable to the Client for payment.
- 8.15 **Non-Discrimination:** In accordance with Article 15 of the Executive Law (also known as the Human Rights Law), and all other State and Federal statutory and constitutional non-discrimination provisions, Araya agrees that neither it nor its County-approved subcontractors shall, by reason of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, familial status, marital status or domestic violence victim status, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation in terms, conditions or privileges of employment or make any inquiry into prospective employment which expresses, indirectly or directly any limitation specification or discrimination based on the foregoing characteristics.
- 8.15 **Conflict.** In the event of a conflict between this document and any other document including exhibits this document shall be the controlling terms of the contract.
- 8.16 **Disclosure.** Araya understands it will have access to work product from Milliman during the course of this Agreement. Araya specifically agrees that it shall not disclose any work product by Milliman to third parties without Milliman's prior written consent and shall specifically indemnify and hold harmless the Client from any and all damages, claims, arising out of Araya's breach of this provision.

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

Matrix Quality Care, Inc., d/b/a Araya

By: 

Montgomery County

By: _____

Printed Name: Patrick McLaughlin

Title: President

Date: 6/24/22

Printed Name: _____

Title: _____

Date: _____

Exhibit A

PROGRAM PRICING TERMS, SERVICES AND FEE SCHEDULE

Araya is projecting that the overall effective rates for Client during the first year of the contract will be as follows:

1. RETAIL PHARMACY PROGRAM CLAIMS

1.1 Network Reimbursement:

Ingredient Cost

Brand Name Drugs	AWP – 19%
Generic Drugs	AWP – 70%

Dispensing Fee

Brand Name Drugs	\$1.50
Generic Drugs	\$1.50

- 1.2. Member Submitted Claims - The reimbursement terms applicable to Member Submitted Claims under the Retail Pharmacy Program will be the same as the terms set forth in this Section 1, unless otherwise provided in writing by Client to Araya.

2. MAIL ORDER PHARMACY PROGRAM CLAIMS

2.1 Mail Order Reimbursement

Mail

Ingredient Cost

Brand Name Drugs	AWP – 25%
Generic Drugs	AWP – 68%

Dispensing Fee

Brand Name Drugs	\$0.00
Generic Drugs	\$0.00

2.2 Specialty Reimbursement

Ingredient Cost

Brand name drugs	AWP – 17%
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Dispensing Fee

\$0.00

3. REBATE GUARANTEE

3.1 Araya estimates rebates paid to the client as follows

Retail Claims (Rebateable)	\$207.36/Rx
Mail Order Claims (Rebateable)	\$473.60/Rx
Specialty Claims (Rebateable)	\$1,849.60/Rx

4. ADMINISTRATIVE FEES

4.1 Client will pay to Araya a Base Administrative Fee in the amount of \$0.50 per paid Claim by Araya pursuant to this Agreement. Except where indicated, the following are included in the Base Administrative Services, as applicable.

SERVICE		CHARGE
Claim Adjudication	<ul style="list-style-type: none"> Administration of Client Plan designs Adjudication of claims via the on-line adjudication system for retail and mail order claims Pay pharmacy provider for Paid Claims submitted on behalf of eligible members Provide twelve months on-line Claims history retention (for use in Claims Processing) Coordination of Benefits 	All Included
Retail Pharmacy Network	<ul style="list-style-type: none"> Establish, maintain, credential and contract an adequate panel of participating network pharmacies Development and distribution of communication materials to participating pharmacies regarding the program Toll-free access to Help Desk for eligibility/claims processing assistance Toll-free access to Araya pharmacists to obtain DUR assistance Monitor network pharmacy performance and compliance, including generic substitution rates, formulary program conformance, and DUR intervention conformance through Retail Network Management initiatives and reporting Toll-free telephone access to voice response unit for members to locate network pharmacies in zip code area 	All Included
Mail Order Pharmacy	<ul style="list-style-type: none"> Integrated on line claim adjudication Free home delivery maintenance medication requested by plan members Submission of prescription orders via e-prescribing, internet, fax or phone Access to pharmacist via toll free number Available next day delivery service (at Member's expense) 	All Included


Eligibility	<ul style="list-style-type: none"> • Administration of eligibility submitted via electronic file transfer and secure FTP in a Araya standard format • Regularly scheduled file updates • Araya Welcome Package and ID Cards for new members (two per family). • Replacement cards charged at Araya cost plus postage 	<p>Included, except:</p> <ul style="list-style-type: none"> • Cost + Postage
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Account Management	<ul style="list-style-type: none"> • Designated Araya Account Team • Clinical and plan consulting, analysis and cost projections • Annual analysis of program utilization and impact of plan design and managed care interventions 	All Included
Customer Service	<ul style="list-style-type: none"> • 24 hour / 7 days a week toll-free telephone access to customer service representatives (CSRs) and clinical support pharmacists for members 	All Included
Member Portal	<ul style="list-style-type: none"> • Member Web Access <ul style="list-style-type: none"> • View utilization history • Drug formulary look-up • Drug information • Pharmacy look-up 	All Included
ID Cards	<ul style="list-style-type: none"> • Additional Member/Participant ID Cards – Replacements (Note: Initial ID Cards are included in the financial offer. However, postage, shipping & handling for initial ID Cards is not.) 	\$1.50/Card + Postage shipping handling
Reporting	<ul style="list-style-type: none"> • Detailed Statement four times per month • Quarterly Executive Summary • Initiative impact analysis • Premium equivalent reporting • Data files supporting client Quality Assurance and Disease Management initiatives that can be provided from data collected through the adjudication process • Custom reporting quoted at time of request • Access to On lien reporting tool nFom • Provide monthly data file to rebate aggregator 	All Included
Prior Authorization	<ul style="list-style-type: none"> • Administrative authorizations • Clinical authorization requiring pharmacist review 	Included, except: <ul style="list-style-type: none"> • \$50 per request
Medication Therapy management	<ul style="list-style-type: none"> • Client utilization review • Patient identification • Therapy review • Prescriber intervention • Recommendation acceptance measurement • Savings Analysis 	\$1.50 PMPM
Specific and Aggregate stop loss reporting	<ul style="list-style-type: none"> • Identification of high cost claimant • Coordination of data with stop loss carrier 	\$1.50 PEPM

Client specific network Management	<ul style="list-style-type: none"> • Implementation and management of adjudication system rules that incentivize use of client specific provider network. • Load and QA of exception override files • Employee support for question regarding client specific network copays and formulary. • Incorporation of Client Specific Network utilization data into Matrix quarterly and annual summary reports • Cost saving impact analysis of Client Specific Network 	\$1.61 PEPM
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IN WITNESS WHEREOF, the parties hereto have executed this Schedule as of the date hereof.

Matrix Quality Care, Inc., d/b/a Araya

By: 
Patrick McLaughlin
President

Date: 6/24/22

Montgomery County

By: _____

Title: _____

Date: _____

Exhibit B

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement"), effective as of date of the Underlying Agreement (as defined herein), is made by and between Matrix Quality Care, Inc., doing business as Araya ("Business Associate") and Montgomery County ("Client").

WHEREAS, Client and Business Associate have entered into an agreement (the "Underlying Agreement") under which Business Associate will perform prescription benefit and claims processing services for Client; and

WHEREAS, Client is a "Covered Entity" or "Business Associate"¹ under HIPAA (as defined herein); and

WHEREAS, to perform the services under the Underlying Agreement, Client will be required to disclose to Business Associate Protected Health Information ("PHI") as that term is defined under HIPAA; and

WHEREAS, Client and Subcontractor have entered into this Agreement to comply with HIPAA and the regulations promulgated thereunder (45 CFR Parts 160, 162 and 164, as amended from time to time), as amended by HITECH (as defined herein) and the regulations promulgated thereunder, and other applicable Federal and State laws and regulations governing the use and disclosure of PHI.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and agreements herein contained, Client and Business Associate agree to the following:

I. Definitions

(a) **"Breach"** means the acquisition, access, use or disclosure of PHI in a manner not permitted under the Privacy Rule which compromises the security or privacy of PHI, subject to the exceptions provided in 45 C.F.R. 164.402(1)(i)-(iii). For purposes of this definition, any acquisition, access, use or disclosure of PHI in a manner not permitted under the Privacy Rule shall be presumed to be a Breach unless it is demonstrated, through a risk assessment, that there is a low probability that the PHI has been compromised.

(b) **"Breach Notification Rule"** means the rules found in 45 C.F.R. Part 160 and Subparts A and D of 45 C.F.R. Part 164, as amended.

(c) **"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996, as amended.

(d) **"HITECH"** means Title XII, Subtitle D of the Health Information Technology for Economic and Clinical Health Act, codified at 42 USC §§ 17921-17954.

(e) **"Individual"** shall have the same meaning as the term "individual" in 45 C.F.R. 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

(f) **"Privacy Rule"** means the rules found in 45 C.F.R. Part 160 and Subparts A and E of 45 C.F.R. Part 164, as amended.

(g) **"Protected Health Information" or "PHI"** means individually identifiable health information as defined in 45 C.F.R. 160.103, limited to the information received by Business Associate from Client or a Covered Entity or created or received by Business Associate on behalf of Client or a Covered Entity Client, including, but not limited to electronic PHI.

¹ For the sake of convenience Araya is referred to herein as the Business Associate whether it is acting in the capacity of a business associate or a subcontractor to a business associate.

(h) **"Regulations"** means the Privacy Rule, the Security Rule, and the Breach Notification Rule, collectively.

(i) **"Required By Law"** shall have the same meaning as the term "required by law" in 45 C.F.R. 164.103.

(j) **"Secretary"** means the Secretary of the Department of Health and Human Services or his/her designee.

(k) **"Security Rule"** means the rules found in 45 C.F.R. Part 160 and Subparts A and C of 45 C.F.R. of Part 164, as amended.

(l) **"Unsecured PHI"** means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of HITECH.

(m) **"Unsuccessful Security Incident"** means, without limitation, activity such as pings and other broadcast attacks on Business Associate'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 PHI, or any use or disclosure of PHI.

(n) Unless defined herein, all other capitalized terms in this Agreement have the meanings given to them in the Regulations, HIPAA, and HITECH.

2. Permitted Uses and Disclosures.

(a) General Prohibition. All uses or disclosures of PHI not authorized by this Agreement or Required by Law are prohibited, unless agreed to in writing by Client.

(b) Internal Use and Disclosure to Employees. Business Associate may use or disclose PHI to its employees only as necessary to perform functions, activities, or services for, or on behalf of, Client and for which Client has engaged Business Associate, provided that such use or disclosure would not violate the Privacy Rule if done by a Covered Entity Client or Client, or otherwise violate this Agreement.

(c) Disclosure to Third Parties. Business Associate may disclose PHI to third parties, including its authorized subcontractors, only as necessary to perform functions, activities, or services for, or on behalf of Client and for which Client has engaged Business Associate, provided that:

(i) The disclosure is required by Law; or

(ii) Business Associate enters into an agreement with each third party that will have access to PHI that is received from, or is created or received by, Business Associate on behalf of Client that: (x) the PHI will remain confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the third party; (y) the third party will notify Business Associate of any Reportable Event (as defined herein); and (z) the third party agrees in writing to be bound by the same restrictions, terms, and conditions that apply to Business Associate under this Agreement.

(d) Proper Management and Administration. Subject to any other limitations in this Agreement, Business Associate may use PHI as necessary for the proper management and administration of Business Associate or to carry out any present or future legal responsibilities of Business Associate, provided such uses are permitted under the Privacy Rule.

(e) Minimum Necessary. Business Associate shall only request, use, or disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use, or disclosure. Business Associate shall limit requests, uses, and disclosure of PHI, to the extent practicable, to a Limited Data Set (as defined at 45 C.F.R. 164.514[e]), and

in all other cases subject to the requirements of 45 C.F.R. 164.502(b), to the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure.

(f) Other Permitted Uses. Business Associate may: (1) perform data aggregation for Client; and (2) de-identify PHI in accordance with 45 C.F.R. § 164.514(b)(2) and use or disclose (and permit others to use or disclose) de-identified information on a perpetual, unrestricted basis.

3. Nondisclosure.

(a) Disclosures Required by Law. Business Associate shall not, without the prior written consent of Client, disclose any PHI on the basis that such disclosure is Required by Law without notifying Client so that Client shall first have an opportunity to object to the disclosure and to seek appropriate relief. If Client objects to such disclosure, Business Associate shall refrain from disclosing the PHI until Client has exhausted all available remedies. Business Associate shall require that persons or entities receiving PHI in accordance with Section 2(c) hereof provide Business Associate with similar notice and opportunity to object before disclosing PHI on the basis that such disclosure is Required by Law.

(b) Additional Restrictions. If Client notifies Business Associate that a Covered Entity Client has agreed to be bound by additional restrictions on the use or disclosure of PHI pursuant to the Privacy Rule, Business Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions.

4. Safeguards, Reporting, and Mitigation.

(a) Privacy Safeguards. Business Associate shall comply with the Privacy Rule, and shall use all appropriate safeguards to prevent any use or disclosure of PHI other than as permitted by the terms of this Agreement.

(b) Security Safeguards for Electronic PHI. Business Associate shall comply with the Security Rule, including the requirements of 45 C.F.R. 164.308 (administrative safeguards), 45 C.F.R. 164.310 (physical safeguards), 45 C.F.R. 164.312 (technical safeguards) and 45 C.F.R. 164.316 (policies and procedures and documentation requirements). Pursuant to the foregoing requirements, Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of Client or a Covered Entity Client.

(c) Reporting Requirements.

(i) Business Associate shall report to Client any Breach of Unsecured PHI and any other use or disclosure of PHI not permitted by this Agreement.

(ii) Business Associate shall also report to Client any Security Incident (as defined by the Security Rule) of which it becomes aware; provided however, the Parties agree that this section constitutes notice by Business Associate to Client of the ongoing existence and occurrence or attempts of Unsuccessful Security Incidents for which no additional notice or report to Client shall be required.

(iii) As soon as practical but no later than five (5) days after Business Associate learns of the occurrence of any non-permitted use or disclosure of PHI, Security Incident or Breach of Unsecured PHI (collectively, a "Reportable Event"), Business Associate shall notify Client of such occurrence.

(iv) As soon as practical but no later than five (5) days of Business Associate notifying Client of any Reportable Event, Business Associate shall provide a written report to Client, unless despite all reasonable efforts by Business Associate to obtain the information required in subparagraphs 4(c)(iv)(a)-(g) below, circumstances beyond the control of Business Associate necessitate additional time. Under such circumstances Business Associate shall provide to Client the information contained in subparagraphs 4(c)(iv)(a)-(g) below as soon as possible and without unreasonable delay, but in no event later than thirty (30) days from the date of discovery of the Reportable Event. Consultant's report shall:

- (A) Identify the nature of the Reportable Event;
- (B) Identify the date of the Reportable Event and the date of the discovery of such event, if known;
- (C) Identify the PHI used or disclosed and the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Reportable Event;
- (D) Identify who made the non-permitted use or received the non-permitted disclosure;
- (E) Identify what corrective action Business Associate took or will take to prevent future similar Reportable Events.
- (F) Identify what Business Associate did or will do to mitigate any deleterious effect of the non-permitted use or disclosure; and
- (G) Provide such other information, including a written report, as Client may reasonably request.

(v) As between Client and Business Associate, Client shall have final authority to determine whether any Reportable Event is a Breach of Unsecured PHI, whether notification requirements under the Breach Notification Rule have been triggered, and the necessity for and content of any required notifications. Business Associate shall cooperate fully to assist Client in identifying individuals potentially affected by a Breach of Unsecured PHI, conducting the risk assessment required by the Breach Notification Rule, and providing any notifications required by the Regulations.

(d) Mitigation. Business Associate shall have procedures in place to mitigate, and shall cooperate with Client to mitigate, to the maximum extent practicable, any harm or damage resulting from the use or disclosure of PHI in violation of this Agreement or in violation of the Privacy Rule.

5. Access, Amendment, and Accounting of PHI.

(a) Access to PHI. Within ten days of a request by Client for access to PHI about an individual contained in a Designated Record Set, Business Associate will make available to Client such PHI for so long as such information is maintained in the Designated Record Set. Business Associate will promptly forward to Client any direct requests for access to PHI. Covered Entity Clients will be solely responsible for approving or disapproving any such request for access to the PHI, and Business Associate will comply with Covered Entity Clients' directions regarding such requests. Notwithstanding the above, if Business Associate or its agents or subcontractors uses or maintains PHI in an electronic health record then within ten days of receipt of a request from Client, Business Associate shall make a copy of such PHI available to Client in an electronic format in order to enable Covered Entity Clients to fulfill their obligations under 45 C.F.R. 164.524(c)(2)(ii).

(b) Availability of PHI for Amendment. Within ten days of receipt of a request from Client for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate will provide such information to Client for amendment and incorporate any such amendments in the PHI, as required by 45 C.F.R. 164.526.

(c) Accounting of Disclosures. Business Associate agrees to document disclosures of PHI and such information related to such disclosures as would be required for Covered Entity Clients or Client to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528. Within ten days of notice by Client to Business Associate that a Covered Entity Client or Client has received a request for an accounting of disclosures of PHI regarding an individual, Business Associate will make available to Client such information as is in Business Associate's possession and is required for a Covered Entity Client or Client to make the accounting required by 45 C.F.R. 164.528. In the event that the request for an accounting is delivered directly to

Business Associate, Business Associate shall within two (2) days of such request forward it to Client in writing. It shall be Covered Entity Clients' responsibility to prepare and deliver any accounting requested. Business Associate shall not disclose any PHI except as permitted by this Agreement. Business Associate shall continue to maintain the information required under this paragraph for a period of six (6) years after the applicable disclosure.

(d) Availability of Books and Records. Business Associate will make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Client available to the Secretary of the United States Department of Health and Human Services for purposes of determining a Covered Entity Client's, Client's, and Business Associate's compliance with the Privacy and Security Rules.

6. Additional Prohibitions and Restrictions.

(a) Prohibition on Sale of PHI. Business Associate shall not sell PHI as prohibited by 45 C.F.R. 164.502(a)(5)(ii) and 45 C.F.R. 164.508(a)(4).

(b) Marketing. Business Associate shall not use or disclose PHI in connection with any Marketing (as defined by 45 C.F.R. 164.501) that is prohibited by 45 C.F.R. 164.508(a)(3).

(c) Fundraising. Business Associate shall not use or disclose PHI in connection with any written Fundraising communication that is prohibited by 45 C.F.R. 164.514(f).

(d) Confidential Communications. Business Associate shall, if directed by Client, use alternative means or alternative locations when communicating PHI to an Individual based on the Individual's request for confidential communications in accordance with 45 C.F.R. 164.522, including but not limited to complying with all requests for restrictions as required under 45 C.F.R. 164.522(a)(1)(iii) and (vi).

7. Obligations of Client.

(a) Notice of Limitations. Client will notify Business Associate of (i) any limitation(s) in a Covered Entity Client's notice of privacy practices in accordance with 45 C.F.R. 164.520; (ii) any changes in, or revocation of, permission by an individual to use PHI; and (iii) any restriction to the use or disclosure of PHI that a Covered Entity Client has agreed to in accordance with 45 C.F.R. 164.522, to the extent that such limitation, change, revocation or restriction may affect Business Associate's use or disclosure of PHI.

(b) Permissible Requests by Client. Client will not request Business Associate to use or disclose PHI in any manner that is not permissible under the Privacy Rule if done by a Covered Entity Client or Client.

8. Term and Termination.

(a) Term. This Agreement shall take effect upon the latest date on which the Agreement is signed by either party, and shall continue in effect until all of the PHI provided by Client to Business Associate, or created or received by Business Associate on behalf of Covered Entity Client or Client, is destroyed or returned to Client, or, if it is infeasible to return or destroy PHI, until protections are extended to such information, in accordance with the termination provisions in this Section.

(b) Termination Upon Breach. In addition to any other remedies available to Client at law or in equity:
(i) Client may immediately terminate this Agreement and any agreement under which Business Associate's services have been engaged, if Client determines that Business Associate has breached a material term of this Agreement or has violated any provision of the Privacy and Security Rules.

(ii) Alternatively, Client may choose to provide Business Associate with written notice of the existence of the material breach or violation and afford Business Associate an opportunity to cure the same upon mutually agreeable terms; provided, however, that Business Associate must cure the breach or violation to the satisfaction of Client not later than thirty days after Client gives such notice. Failure to cure in the manner set forth in

this paragraph is grounds for the immediate termination this Agreement and any agreement under which Business Associate's services have been engaged.

(iii) Notwithstanding Section 8(b)(i) and (ii), if Business Associate's cure of the breach or violation is not successful within the time provided above, and termination of this Agreement is not feasible in Client's sole discretion, Client may report Business Associate's breach or violation to the Secretary of the United States Department of Health and Human Services, and Business Associate agrees that it shall not have or make any claim, whether at law, in equity, under this Agreement, or otherwise, against Client with respect to such report.

(iv) If Business Associate knows of a pattern of activity or practice of Client that constitutes a material breach or violation of Client's duties and obligations under either this Agreement or the Privacy and Security Rules, Business Associate shall provide an opportunity for Client to cure the material breach or violation; provided however, if Client does not cure the material breach or violation to Business Associate's satisfaction within thirty days, Business Associate may terminate this Agreement, if feasible.

(c) Effect of Termination.

(i) Except as provided in paragraph 8(c)(ii) below, upon termination of this Agreement and/or any agreement under which Business Associate's services have been engaged, Business Associate shall either return to Client or destroy all existing PHI received or created from or on behalf of Client, including PHI in the possession of Business Associate's subcontractors or agents. Business Associate shall retain no copies of such PHI.

(ii) In the event that Business Associate determines it is not feasible to return or destroy PHI, Business Associate must notify Client of the conditions that make return or destruction infeasible and, in such event, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

9. General.

(a) Survival of Obligations. The obligations of the parties under this Agreement shall survive termination of Subcontractor's services to Client and any agreement under which such services have been engaged.

(b) Equitable Remedies. Subcontractor recognizes that irreparable injury may result to Client if Subcontractor breaches any provision(s) of this Agreement. Subcontractor agrees that if it should engage, or directly cause any other person or entity to engage, in any act in violation of any provision hereof, that Client will be entitled, in addition to such other remedies, damages and relief as may be available under applicable law, to an injunction prohibiting Subcontractor from engaging in any such act or specifically enforcing this Agreement, as the case may be. No failure or delay by Client in exercising any right, power or privilege under this Agreement shall operate as waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof.

(c) Regulatory References. A reference in this Agreement to a section in the Privacy and Security Rules means the section as in effect or as amended, and for which compliance is required.

(d) Jurisdiction and Venue. The exclusive means of disposing of any dispute arising under this Agreement shall be decided in a New York State Court of competent jurisdiction located within Montgomery County, New York. There shall be no right to binding arbitration. Pending final resolution of a dispute, the Contractor shall proceed diligently with performing the terms of this Agreement. The Contractor waives any dispute or claim not made in writing and received by the County within thirty (30) days of the occurrence giving rise to the dispute or claim. The claim must be in writing for a sum certain and any money requested must be fully supported by all cost and pricing information.

(e) Notice Regarding Compelled Disclosure. If Subcontractor is requested pursuant to, or believes it is required by, applicable law or regulation or by legal process to disclose any PHI, Subcontractor will provide Client with prompt written notice of such request(s) to enable Client to control the response to such request(s) and, where

appropriate, to seek an appropriate protective order or pursue other authorized procedures to challenge the attempt to compel disclosure. Subcontractor will cooperate with Client in its efforts to challenge such compelled disclosure.

(f) Entire Agreement. This Agreement constitutes the entire agreement between the parties on the subject matter of this Agreement, and supersedes all oral and written prior representations, agreements, and understandings relating to the subject matter, including any conflicting provisions of any prior or contemporaneous agreements between the parties.

(g) Waiver and Amendment. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provisions of this Agreement. This Agreement may not be amended, modified, supplemented, or rescinded except by a writing signed by both parties. Notwithstanding the forgoing, the parties agree that this Agreement shall be deemed amended without requiring further action by either party, as may be necessary from time to time for Client and Subcontractor to comply with amendments, revisions, and additions to the Privacy and Security Rules.

(h) Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement which can be given effect without the invalid provision shall continue in full force and effect and shall in no way be impaired or invalidated.

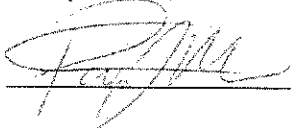
(i) Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity Clients and Client to comply with the Privacy and Security Rules, and all other Federal and State laws.

(j) No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer upon any person other than Client, Subcontractor and their respective successors and assigns, any rights, remedies, obligations or liabilities.

Matrix Quality Care, Inc. d/b/a Araya

Montgomery County

By:



By:

Name: Patrick McLaughlin

Name:

Title: President

Title:

Date: 6/24/22

Date: