

# Pharma Force Group LLC

## Software as a Service Agreement

This Software as a Service Agreement (the “Agreement”) is entered into as of October 2, 2023 (Date) between **Pharma Force Group LLC (“PharmaForce”)**, a Delaware corporation, with offices located at 4300 S. US Hwy 1, Ste 203-329, Jupiter, FL 33477 and MANGUM REGIONAL MEDICAL CENTER (“Customer”), with offices at 1 Wickersham St, Mangum, OK 73554.

### 1. Definitions

1. “Service” shall mean the online business application, “PharmaForce,” that Customer is authorized to access pursuant to the Agreement.
2. “Customer Data” shall mean any data, information, or other materials of any nature whatsoever, provided to PharmaForce by Customer in the course of implementing and/or using the Service.
3. “Electronic Communications” shall mean any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically.
4. “Seat(s)” means a unique login for each general access user.
5. “Term” means any Initial Term and/or Renewal Term as defined in this Agreement.

### 2. Product

PharmaForce will provide Customer with the Service and any new features that augment or enhance the current business application. PharmaForce shall host the Service and may update the content, functionality, and user interface of the Service from time to time in its sole discretion and in accordance with the Agreement.

### 3. Services

PharmaForce is a 340B Third Party Administrator. As a third party administrator, PharmaForce determines the eligibility of claims and dispensations for 340B based upon the entity’s data and applied configurations. PharmaForce splits orders to the specific account types dependent on the accumulation, configuration logic, pharmacy requirements and the specific solution. PharmaForce is responsible for the following services: (1) load Customer’s necessary data to perform Contract Pharmacy and Split Billing administration within the PharmaForce application; (2) establish interface connections between Covered Entity, Wholesalers, Pharmacies, and PharmaForce; (3) remotely guide the Customer Super Users through configuring their 340B program through the PharmaForce User Interface; (4) provide ongoing remote super users training as needed; (5) option to provide onsite support in the event of a HRSA Audit with only expenses paid by Customer.

### 4. Customer Responsibilities

The Customer is responsible for the following: (1) where applicable, connect PharmaForce with Customer’s IT teams for interfaces; (2) where interfaces are not applicable, acquire all necessary data for each Customer setup, leveraging templates provided by PharmaForce; (3) provide Super Users to be trained by a PharmaForce team. The Super Users will then train new users of the system; (4) determine the 340B configuration settings within PharmaForce; (5) perform acceptance testing and determining Go Live readiness and date; (6) participate, when requested by PharmaForce, in government auditing & compliance activities

### 5. Reservation of Rights and Ownership

PharmaForce reserves all rights not expressly granted to you in this License. The Service is protected by copyright and other intellectual property laws and treaties. PharmaForce or its suppliers own the title, copyright, and other intellectual property rights in the Service. Customer is paying for access to the Service, the Service is not sold. The Agreement does not grant Customer any rights to trademarks or service marks of PharmaForce.

## 6. **Use Rights**

Subject to the terms and conditions of the Agreement, PharmaForce grants to Customer during the Term of the Agreement the non-exclusive, non-transferable (except in connection with an assignment under Section 18 - Miscellaneous) and, subject to the terms of this Agreement, terminable right to use the Service and to display content solely for Customer's internal business operations, provided such operations shall not include service bureau use, outsourcing, renting, or time-sharing the Service. Customer acknowledges and agrees that the rights granted herein do not constitute a concurrent user license and that the rights granted to Customer are provided to Customer on the condition that Customer does not (and does not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Service or any part thereof or otherwise attempt to discover any source code, modify the Service in any manner or form, or use unauthorized modified versions of the Service, including (without limitation) for the purpose of building a similar or competitive product or service or for the purpose of obtaining unauthorized access to the Service. Customer is expressly prohibited from sublicensing use of the Service to any third parties. Customer acknowledges and agrees that PharmaForce shall own all rights, title and interest in and to all intellectual property rights in the Service. Except as provided in this Agreement, the access granted to Customer does not convey any rights in the Service, express or implied, or ownership in the Service or any intellectual property rights thereto. Any rights not expressly granted herein are reserved by PharmaForce.

## 7. **License from Customer**

Subject to the terms and conditions of the Agreement, Customer grants PharmaForce the non-exclusive, non-transferable (except in connection with an assignment under Section 18 Miscellaneous) license to copy, store, record, transmit, maintain, display, view, print, or otherwise use Customer Data to the extent necessary to provide the Service to Customer. In connection with its provision of the Service and access to certain Customer Data, PharmaForce will comply with applicable requirements of law relating to Protected Health Information (PHI), and in connection therewith, will enter into a separate Business Associate agreement with Customer attached hereto as Exhibit A (the "Business Associate Agreement"). Customer agrees that the license to Customer Data shall survive the termination of the Agreement for one year, solely for the purpose of storing backup Customer Data at an offsite storage facility. Customer agrees that PharmaForce and its affiliates may collect and use technical information gathered as part of the product support services provided to Customer, if any, related to the Service. PharmaForce may use this information solely to improve our products or to provide customized services or technologies to Customer and will not disclose this information in a form that personally identifies Customer.

## 8. **Term, Fees and Payments**

### **Term and Termination**

This Agreement will commence on the date set forth above and shall continue for an Initial Term of thirty-six (36) months ("Initial Term"). Upon completion of the Initial Term, the Agreement shall automatically renew for successive twelve (12) month periods ("Renewal Terms"), unless terminated by either party providing a minimum of thirty (30) days written notice of intent to terminate this Agreement.

**Termination.** Customer may terminate this Agreement at any time for any reason with a thirty (30) days prior notice of its intention.

## Fees

**Contract Pharmacy Administration** - Fees per unique covered entity ID to individual pharmacy location combination are the greater of \$2.00 for every Approved 340B claim or the minimum fee of \$500 per month. These fees are inclusive of specialty or non-specialty claims adjudicated within the store location. Fees begin based on the earliest claim filled date.

**In-House Retail / Outpatient Pharmacy**- Fees per unique covered entity ID to individual pharmacy location combination are the greater of \$2.00 for every Approved 340B claim or the minimum fee of \$500 per month. These fees are inclusive of specialty or non-specialty claims adjudicated within the store location. Fees begin based on the earliest claim filled date.

**Specialty Pharmacies Administration** - Fees per unique covered entity ID to individual pharmacy location combination are the greater of \$50.00 for every Approved 340B claim or the minimum fee of \$500 per month. The minimum fee will only be applied if at least one approved claim is found during that month. If no approved claims are found across any of the Specialty Contract Pharmacy Chain stores in a given month, then a minimum fee of \$500 will be applied for that month for that pharmacy chain. Fees begin based on the earliest claim filled date.

**Contract Pharmacy-Mail Order Administration** - Fees per unique covered entity ID to individual pharmacy location combination are the greater of \$2.00 for every Approved 340B claim or the minimum fee of \$500 per month. The minimum fee will only be applied if at least one approved claim is found during that month. If no approved claims are found across any of the Mail Order Contract Pharmacy Chain stores in a given month, then a minimum fee of \$500 will be applied for that month for that pharmacy chain. Fees begin based on the earliest claim filled date.

**Home Infusion** - Fees per unique covered entity ID to individual pharmacy location combination are the greater of \$50.00 for every Approved 340B claim or the minimum fee of \$500 per month. Fees begin based on the earliest claim filled date.

**Claim Processing Fee** – Fees per claim reviewed by PharmaForce are \$0.03 per claim per unique Pharmacy to Covered Entity combination. If Pharmacy charges a Gateway Fee, those gateway fees will be charged monthly to Customer beginning on the earliest claim filled date.

**Cash/340B Drug Discount Program Cards (340B Cards)**- Fees are \$4.00 for every claim adjudicated via the 340B Cards or the minimum fee of \$500 per month. These fees are incremental to the PharmaForce fees for identifying approved 340B claims. These fees will only be applied when requested by Customer to initiate the program.

**Referral Capture Service** – The Full Service option fee will be the amount of 20% of the Net Savings for any referral captured claim during the time of this contract. The Self Service option fee will be the amount of 12% of the Net Savings for any referral captured claim during the time of this contract. The Net Savings Amount is calculated as the total amount collected by the pharmacy minus the pharmacy dispensing fee. This Service Fee is applicable to both the original prescriptions identified and the subsequent refills. Upon contract termination, any prescriptions originally identified by the PharmaForce Referral Capture service will continue to incur fees and be billed for the remainder of the prescription over the next 12 months. This includes refills for the same product, written by the same providers for the same patients as originally identified by the PharmaForce Referral Capture service.

Item #	Description:	Self-Ser- vice	Full Service
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1	Access to PharmaForce's Referral Claims Manager platform.	X	X
2	Establish interfaces to import encounter, referral, and claims files into the RCM platform.	X	X
3	Processing of encounter file, referral file, and non-captured referral claims.	X	X
4	Access to the RCM's fax outbound & inbound features along with fax forwarding of patient progress notes.	X	X
5	Application support and assistance as needed by users.	X	X
6	PharmaForce will provide assistance in developing a referral policy if CE does not have one in place.		X
7	Review each claim that meets established criteria and review the EMR to ensure each claim meets compliance requirements.		X
8	If an internal referral, document referral date in the RCM for HRSA audit tracking.		X
9	Request progress notes for external referrals from outside specialty clinics in order to "close the loop" for a referral claim.		X
10	Forward/upload the progress notes received into the CE's EMR for clinical care and documentation.		X
11	Approve the claim and refills in the Referral Claims Manager platform. (approval indicator is needed to transmit to our Contract Pharmacy Application for replenishment)		X
12	Provide detailed reporting to Customer on all claims re-qualified to 340B, including detailed, auditable points of data, as documented by PharmaForce during the routine audit of Customer EMR.		X
13	Provide summary reporting to Customer on PharmaForce work, including total additional revenue collected for month, number of patient records audited, number of prescriptions re-qualified to 340B, and year-to-date revenue and other statistics.		X
14	Full HRSA audit support in case one of the referral claims is selected for a HRSA audit		X

**340B Home Delivery** - PharmaForce will receive a service fee in the amount of 10% of the net savings amount for 340B approved claims filled by the mail-order pharmacy partnered with PharmaForce to provide the service. The net savings amount is calculated as the total payment received by the pharmacy for the relevant claim minus the pharmacy dispensing fee. Although these fees are incremental to the PharmaForce fees for identifying approved 340B claims, PharmaForce will waive the Contract Pharmacy Administration minimum fees and Claim Processing Fee associated with this mail-order pharmacy for the first three months as this service is being established. These fees are separate from any fees associated with the contracted mail-order pharmacy (i.e. dispense fees). These fees will only be applied when requested by Customer to initiate the program.

**Mixed Use Split Billing** - Fees per mixed use hospital pharmacy leveraging the split billing Service is based on the hospital's number of licensed beds. Monthly fees are as follows depending on licensed bed size; Up to 299 licensed beds \$1250, 300 to 499 licensed beds \$1750 per month, 500 licensed beds or more \$2250 per month. Fees begin in the month when the first live purchase order was submitted.

### **Expenses and Service Fees**

Customer shall pay all fees as set forth above. Customer will also reimburse PharmaForce for any travel and lodging expenses reasonably and necessarily incurred in the performance of any services onsite for the Customer, upon prior approval by Customer. In the event PharmaForce is requested or required to facilitate the flow of funds owed to Customer by Contracted Pharmacy, PharmaForce shall be entitled to a service fee no greater than 2% of the total amount being transferred from Contract Pharmacy.

### **Payment Terms**

Service Fees and Expenses are due within thirty (30) days from the date of invoice. Service Fees are billed in arrears, beginning with the applicable Go-Live Date. All invoices not disputed within 60 days of receipt of such invoice will be deemed accepted. Payment is due notwithstanding the non-performance of any obligations of any third parties, including under any contract pharmacy arrangement. All payments to PharmaForce are to be made in U.S. currency and are transmitted electronically.

### **Late Payments**

Any late payments shall be subject to a service charge equal to 0.5% of the amount due (calculated on a monthly basis) or the maximum amount allowed by law, whichever is less. In the event that PharmaForce incurs any costs, including reasonable attorney's fees, for efforts in collecting overdue fees from Customer, Customer agrees to pay such costs. Customer further agrees to pay all foreign, federal, state, and local taxes, if applicable, to Customer's access to, use, or receipt of the Service. If Customer is late in payment and is actively using the Service, PharmaForce reserves the right to discontinue access to the Service 60 days after payment was due, until such time that Customer remits payments due in full. Discontinuation of Service access does not release Customer of obligation to remit payments, both overdue and future, for the duration of the Agreement.

## **9. Warranties**

PharmaForce warrants that the Service will conform to and perform in accordance with all generally available documentation and specifications relating to the Service. Except as set forth herein, PharmaForce provides the service "AS IS" and "WHERE IS" with no warranties of any kind.

## **10. Confidentiality**

Customer and PharmaForce shall maintain the confidentiality of any other information or data which the other party designates or which a party knows or has reason to believe is proprietary, in at least the same manner as the party maintains the confidentiality of its own proprietary information ("Confidential Information"). Confidential Information includes, but is not limited to, technical and non-technical information materials, processes, ideas, and techniques, information pertaining to finances, processes, customers, clients, employees, students, fees, rates, accounting data, statistical data, marketing, research and development plans, projects, and findings, business plans, and the terms of any contracts. Each party's standard of care for maintaining the confidentiality and security of Confidential Information shall be no less than is reasonable for the kind and type information involved. Each party may use Confidential Information only as permitted hereunder. Neither party shall disclose or provide any Confidential Information to any third-party and shall take necessary measures to prevent any unauthorized disclosure by its affiliates, employees, agents, contractors, or consultants including by completing appropriate individual nondisclosure agreements. The receiving party acknowledges that unauthorized disclosure or use of the disclosing party's Confidential Information may cause the disclosing party irreparable harm, and the receiving party agrees to give the disclosing party written notice of any such event as soon as commercially reasonable upon discovery of such, and to take all legal means to minimize any loss or damage due to any such event. Accordingly, each party agrees that the other party shall have the right to seek immediate injunctive relief for any breach of this section by the other, which shall be in addition to any other rights and remedies that it may have available.

## **11. Indemnification**

PharmaForce shall indemnify and defend Customer from and against any damages, losses, liabilities, judgments, fines, penalties, costs and expenses (including reasonable attorney's fees) arising out of or relating to any claim, demand, investigation, action, suit or proceeding made or brought against Customer by a third party alleging that any Service infringes or misappropriates such third party's intellectual property rights (a "Claim"), provided Customer (a) promptly notifies PharmaForce in writing of the Claim; and (b) gives PharmaForce sole control of the defense and settlement of the Claim; provided that PharmaForce may not enter into any settlement that adversely affects Customer without Customer's prior written consent. Upon receiving notice of such a Claim related to the Service, PharmaForce may, at its discretion, and at no cost to Customer, (i) modify the Service so it is no longer alleged to infringe or misappropriate, without breaching any of the warranties above; (ii) obtain a license for Customer's continued use of the Service in accordance with this Agreement. The above defense and indemnification obligations do not apply to the extent (i) the Claim arises from the use or combination of the Service or any part thereof with software, hardware, data, or processes not provided by PharmaForce, if our Services or use thereof would not infringe without such combination; or (ii) the Claim arises from Customer's use of the Service in violation of this Agreement, the applicable documentation or applicable Order Forms. This Section states PharmaForce's sole liability to, and Customer's exclusive remedy against, the other party for any type of claim described in this Section.

## **12. Disclaimer of Liability**

Except for liability arising out of Section 11 (Indemnification) or the Business Associate Agreement, the parties agree that in no event shall either party be liable to anyone for incidental, consequential, punitive, special or exemplary damages, or indirect damages of any type or kind (including loss of data, revenue, profits, use or other economic advantage), arising from breach of warranty or breach of contract, or negligence, or any other legal cause of action arising from or in connection with the Agreement.

## **13. Limitations of Liability**

Subject to the last sentence of this Section, the maximum liability of either party to any person, firm or corporation whatsoever arising out of or in the connection with any license, use or other employment of the Service, whether such liability arises from any claim based on breach or repudiation of contract, breach of warranty, tort, or otherwise, shall in no case exceed the equivalent of two (2) times the amount paid by Customer to PharmaForce in the twelve (12) months preceding the applicable claim. The essential purpose of this provision is to limit the potential liability of the parties arising from the Agreement. The parties acknowledge that the limitations set forth in this Section are integral to the amount of consideration levied in connection with granting access to the Service and that, were PharmaForce to assume any further liability other than as set forth herein, such consideration would of necessity be set substantially higher. Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitations of liability for incidental or consequential damages, so the exclusions set forth above may not apply to Customer. The limitation of liability set forth in this section shall apply to (i) any indemnity obligations set forth in this Agreement, and (ii) the Business Associate Agreement.

## **14. Service Availability**

A Service Level Agreement specific for this Service is defined in Exhibit B.

## **15. Support**

A Service Level Agreement specific for this Service will be defined in Exhibit B.

## **16. Termination**

In the event of a material breach of the Agreement, either party may terminate the Agreement if the breaching party fails to cure such breach within 30 days of that party being notified in writing of the breach. In addition, Customer may terminate this Agreement in accordance with Exhibit A. Upon termination or expiration of this Agreement, Customer shall have no rights to continue use of the Service.

## **17. Insurance**

At all times during the Term of this Agreement, PharmaForce shall abide by the insurance requirements set forth in Exhibit C.

## **18. Miscellaneous**

This Agreement shall inure to benefit and bind the parties hereto, their successors and assigns, but neither party may assign the Agreement without written consent of the other, except such consent is not required to the successor of all or substantially all of the assignor's business or assets. The Agreement does not create any joint venture, partnership, agency or employment relationship between the parties, although PharmaForce reserves the right to disclose that Customer is a user of the Service; provided that such disclosure may not imply any endorsement of the Service by Customer. This Agreement (and any Exhibits hereto) represent the entire agreement of the parties and supersedes all prior discussions and/or agreements between the parties and is intended to be the final expression of the Agreement. It shall not be modified or amended except in writing signed by both parties. In the event of an express conflict between the terms of this Agreement and the terms of any Exhibit, the verbiage of the Agreement controls. This Agreement shall be governed in accordance with the laws of the State of Pennsylvania and any controlling U.S. federal law. Any disputes, actions, claims or causes of action arising out of or in connection with this Agreement (or the Service) shall be subject to the exclusive jurisdiction of the state and federal courts located in Pennsylvania. If any provision is held by a court of competent jurisdiction to be contrary to law, such provision shall be limited or eliminated to the minimum extent necessary so that the Agreement shall otherwise remain in full force and effect unless the provisions held invalid or unenforceable will substantially impair the benefits to either party of the remaining portions of the Agreement. Furthermore, the parties hereto shall cooperate to amend the invalid or unenforceable provision to most closely approximate the original intent of the provision while making it acceptable to the applicable court. In the event of any litigation of any controversy or dispute arising out of or in connection with this Agreement, its interpretations, its performance, or the like, the prevailing party shall be awarded reasonable attorneys' fees and/or costs. Neither party shall be liable for any loss or delay resulting from any force majeure event, including, but not limited to, acts of God, fire, natural disaster, terrorism, labor stoppage, war or military hostilities, criminal acts of third parties, and any payment date or delivery of Service date shall be extended to the extent of any delay resulting from any force majeure event. Sections 4, 5, 8, 9 and 14 shall survive the termination or expiration of this Agreement.

## **19. Severability**

Each section of this Agreement is severable from this Agreement and, if a court of competent jurisdiction declares one or more provisions or parts unenforceable, the remaining provisions shall remain in full force and effect unless the provisions or parts held invalid or unenforceable will substantially impair the benefits to either party of the remaining portions of the Agreement. Furthermore, the parties hereto shall cooperate to amend the invalid or unenforceable provision or part to most closely approximate the original intent of the provision while making it acceptable to the applicable court.

THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS, AND THE PERSON SIGNING ON BEHALF OF EACH HAS BEEN AUTHORIZED TO DO SO.

**ACKNOWLEDGED AND AGREED:**

**Pharma Force Group LLC**

MANGUM REGIONAL MEDICAL CENTER \_\_\_\_\_

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

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

Name: **Daniel Dimitri**

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

Title: **CEO**

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

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

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



## Exhibit A

### Business Associate Agreement

#### BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is made as of the October 2, 2023, ("Effective Date") by and between **Mangum Regional Medical Center** ("Covered Entity") and **Pharma Force Group LLC** ("Business Associate").

#### RECITALS

A. Covered Entity and Business Associate are parties to a **Software as a Service** Agreement dated **October 2, 2023** (the "Services Agreement") pursuant to which Business Associate provides certain services to the Covered Entity and, in connection with those services, the Covered Entity discloses to Business Associate certain individually identifiable protected health information ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the American Recovery and Reinvestment Act of 2009 ("ARRA") and the associated regulations, 45 CFR Parts 160 and 164 (the "Privacy Rule"), as amended from time to time.

B. The parties desire to comply with the HIPAA standards for the privacy and security of PHI of patients of the Covered Entity.

NOW, THEREFORE, for and consideration of the recitals above and the mutual covenants and conditions contained herein, the parties enter into this Agreement to provide a full statement of their respective responsibilities.

#### SECTION 1 - Definitions

##### 1.01 Reference to HIPAA Rules.

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

##### 1.02 Specific definitions.

(a) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean **Pharma Force Group LLC**, on behalf of itself and its affiliates.

(b) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean **Mangum Regional Medical Center**.

(c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

#### SECTION 2 - Obligations and Activities of Business Associate

2.01 Performance of Services Agreement. Business Associate agrees to not use or disclose PHI other than as permitted or required by the Services Agreement or as required by law.

2.02 Safeguards for Protection of PHI. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Services Agreement and this Agreement.

2.03 Mitigation of Harm of Unauthorized Use or Disclosure. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

2.04 Reporting of Unauthorized Use or Disclosure. As soon as practicable, but in no event later than ten (10) days, Business Associate agrees to report to Covered Entity in writing any use or disclosure of PHI not provided for by the Services Agreement or this Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware. Such report shall contain:

(a) A brief description of what happened, including the date of the unauthorized access or use of PHI and the date of the discovery of the unauthorized access or use of PHI;

(b) A description of the type of unsecured PHI that was involved in the unauthorized access or use;

(c) Any recommended steps the individual whose PHI was inappropriately disclosed should take to protect themselves from the potential harm; and

(d) A brief description of what the Business Associate is doing to investigate the unauthorized access or use of PHI.

Business Associate will report such incidents to the Covered Entity's Privacy Officer. Business Associate will, subject to the approval of the Covered Entity, provide breach notifications to affected individuals, the HHS Office for Civil Rights (OCR), and potentially the media, on behalf of the Covered Entity. If the Covered Entity elects to be responsible for all required notifications, the Business Associate shall reimburse the Covered Entity for the costs associated with the notifications. Such costs will be paid to Covered Entity by Business Associate within thirty (30) days of receipt of an itemized invoice from the Covered Entity.

2.05 Use of Subcontractors. Business Associate agrees, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to contract with any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate whereby such subcontractors agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.

2.06 Access to PHI. Business Associate shall make available PHI in a designated record set to the Covered Entity, or as directed by the Covered Entity to an individual or the individual's designee, for inspection and copying within ten (10) days of a request by Covered Entity as necessary to satisfy the Covered Entity's obligations under 45 CFR 164.524.

2.07 Amendment by Business Associate. Business Associate agrees to make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526, within thirty (30) days of receipt of a request from Covered Entity.

2.08 Documentation of Disclosures. Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to the Covered Entity, or as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528. Business Associate shall provide such information to the Covered Entity within ten (10) days of a request by Covered Entity.

2.09 Compliance with Patient Right Provisions of Privacy Rule. To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

2.10 Opportunity to Object. Business Associate agrees that, if it has a legal obligation to disclose any PHI, it will notify the Covered Entity as soon as reasonably practical after it learns of such obligation, and in any event within a time sufficiently in advance of the proposed release date such that Covered Entity's rights would not be prejudiced, as to the legal requirement pursuant to which it believes the PHI must be released. If the Covered Entity objects to the release of such PHI, Business Associate will allow the Covered Entity to exercise any legal rights or remedies the Covered Entity might have to object to the release of PHI, and Business Associate agrees to provide such assistance to Covered Entity, at Covered Entity's expense, as Covered Entity may reasonably request in connection therewith.

2.11 Access to Books and Records. Business Associate agrees to make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

### **SECTION 3 - Permitted Uses and Disclosures by Business Associate**

3.01 Services Agreement. Business Associate may use or disclose PHI as necessary to perform functions, activities, or services for, or on behalf of, the Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by the Covered Entity.

3.02 Other Permitted Uses and Disclosures.

(a) Business Associate may use or disclose PHI to de-identify the information in accordance with 45 CFR 164.514(a)-(c).

(b) Business Associate may use or disclose PHI as required by law.

(c) Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.

(d) Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by the Covered Entity, except for the specific uses and disclosures set forth below.

### **SECTION 4 – Obligations of Covered Entity**

4.01 Inform of NPP. The Covered Entity shall notify Business Associate of any limitation(s) in the Covered Entity's notice of privacy practices under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

4.02 Notification of Revocation. The Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

4.03 Notification of Restriction. The Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that the Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

4.04 Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the HIPAA Regulations

if done by Covered Entity, except as permitted pursuant to the provisions of Sections 2(b), 2(c), 2(d) and 2(e) of this BAA.

4.05 Notice of Amendments. Covered Entity shall notify Business Associate of any amendments made by an Individual to Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.526, to the extent that Business Associate relies or could foreseeably rely on such amended Protected Health Information. Covered Entity shall provide such notice no later than fifteen (15) days prior to the effective date of the change.

4.06 Notice of Potential Problems. Covered Entity shall provide notice to Business Associate of any pattern of activity or practice of Business Associate that Covered Entity believes constitutes a material breach or violation of Business Associate's obligation under the Underlying Agreement or Agreement or other arrangement within five (5) calendar days of discovery and shall meet with Business Associate to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

4.07 Notification of Security Incidents. Covered Entity shall immediately notify Business Associate of any Security Incidents or other security issues/concerns with Covered Entity's environment, including, but not limited to, ransomware, where Business Associate performs services. Provided, however, that Covered Entity shall not be required to report an immaterial incident consisting solely of an unsuccessful attempt to improperly access Electronic PHI that is stored in an information system under its control.

4.08 Privacy/Security. Covered Entity shall ensure that it follows all generally accepted industry practices for privacy and security of its systems, including, but not limited to, the requirement for complex passwords, unique user ids, password resets, and the timely granting of systematic access and termination of said access when notified. Further, Covered Entity shall only provide to Business Associate access to the minimum necessary PHI required to perform the services under the Agreement.

## **SECTION 5 - Term and Termination**

5.01 Term. This Agreement shall become effective on the Effective Date and shall terminate on the same date that the Service Agreement terminates, or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner. In addition, certain provisions and requirements of this Agreement shall survive its expiration or other termination in accordance with Section 7.04 herein.

5.02 Termination for Cause. The Covered Entity may immediately terminate this Agreement and any related Service Agreement if the Covered Entity makes the determination that the Business Associate has breached a material term of this Agreement, provided an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the Service Agreement if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity, except that the Covered Entity will immediately terminate this Agreement and the Service Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.

5.03 Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from the Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

(a) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

(b) Return to the Covered Entity or, if agreed to by the Covered Entity, destroy, the remaining PHI that the Business Associate still maintains in any form;

(c) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;

(d) Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at Section 3.02(e) and (f) above which applied prior to termination;

(e) Return to Covered Entity or, if agreed to by Covered Entity, destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities; and;

(g) Obtain or ensure the destruction of PHI created, received, or maintained by any of the Business Associate's subcontractors.

## **SECTION 6 – Indemnification and Disclaimer**

6.01 Indemnification. Business Associate shall indemnify, defend and hold Covered Entity and its [parent corporation] and affiliates, their directors, officers, agents, servants, and employees (collectively "the Indemnitees") harmless from and against all claims, causes of action, liabilities, judgments, fines, assessments, penalties, damages, awards or other expenses of any kind or nature whatsoever, including, without limitation, attorney's fees, expert witness fees, and costs of investigation, litigation or dispute resolution, incurred by the Indemnitees and relating to or arising out of breach or alleged breach of the terms of this Agreement, or a violation of the HIPAA Rules, by Business Associate.

Covered Entity shall indemnify, defend and hold Business Associate and its parent corporation and affiliates, their directors, officers, agents, servants, and employees (collectively "the Indemnitees") harmless from and against all claims, causes of action, liabilities, judgments, fines, assessments, penalties, damages, awards or other expenses of any kind or nature whatsoever, including, without limitation, attorney's fees, expert witness fees, and costs of investigation, litigation or dispute resolution, incurred by the Indemnitees and relating to or arising out of breach or alleged breach of the terms of this Agreement, or a violation of the HIPAA Rules, by Covered Entity.

6.02 Disclaimer. COVERED ENTITY MAKES NO WARRANTY OR REPRESENTATION THAT COMPLIANCE BY BUSINESS ASSOCIATE WITH THIS AGREEMENT OR THE HIPAA RULES WILL BE ADEQUATE OR SATISFACTORY FOR BUSINESS ASSOCIATE'S OWN PURPOSES. BUSINESS ASSOCIATE IS SOLELY RESPONSIBLE FOR ALL DECISIONS MADE BY BUSINESS ASSOCIATE REGARDING THE SAFEGUARDING OF PHI.

## **SECTION 7 - Miscellaneous**

7.01 Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

7.02 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law. This 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.

7.03 Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

7.04 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 2.01, 2.02, 2.03, 2.04, 2.10, 5.03 and 6.01, to the extent applicable, shall survive termination

of this Agreement indefinitely. In addition, Sections 2.06 and 2.07 shall survive termination of this Agreement, provided that the Covered Entity determines that the PHI being retained pursuant to Section 5.03 herein constitutes a Designated Record Set.

7.05 No Third Party Beneficiaries. Nothing express or implied in this 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.

7.06 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:

**Pharma Force Group LLC**  
4300 S. US Hwy 1, Ste 203-329  
Jupiter, FL 33477

If to Covered Entity, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

In addition, Covered Entity shall provide the phone number and email address for the following contacts:

Privacy Officer:  
Security Officer:  
Compliance Officer:

7.07 Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies of this document shall be deemed to be originals.

7.08 Governing Law. The laws of the State of Oklahoma shall govern the interpretation of this Agreement and shall apply in any lawsuit or other dispute arising out of this Agreement, without regard to conflict of laws provisions.

IN WITNESS WHEREOF, the parties have hereunto set their hands effective the Effective Date first above written.

COVERED ENTITY

BUSINESS ASSOCIATE

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

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

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

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

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

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

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

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

## Exhibit B

### 1. Service Availability

“**Uptime**”. PharmaForce guarantees an uptime of 99.99% for the PharmaForce application. If the actual availability of the Service is less than 99.99% in any two of four consecutive months, then, in addition to all other remedies available to Customer, Customer may terminate the Agreement on written notice to PharmaForce with no liability, obligation or penalty to Customer by reason of such termination.

### 2. Service Levels

The standard Support Help Desk will be available Monday – Friday, 8:00 am EST – 8 00 pm EST. An emergency after hours hotline number is available and monitored 24hrs per day seven days per week. Response times are based on assigned severity level of the issue. Service requests can be submitted either by calling into our Support Help Desk, or through the Customer Support portal within PharmaForce. All support requests will be reviewed by the support representative who will make the final determination of level of severity.

A confirmation of receipt will be issued within 15 minutes of completion.

Initial contact by a support representative will occur based on the following severity levels:

1. **Critical** - A problem or issue that has halted operation or has a catastrophic impact on business.
  - **Resolution Handling** – After initial call into the Support Help Desk, a support agent will be assigned to the request and troubleshooting will begin within 1 hour.

*Note: To ensure immediate response, customers should call all Critical issues directly to the support line.*

2. **Severe** – The problem has a significant impact on business and/or an important feature is unavailable.
  - **Resolution Handling – Upon receipt of the initial service request**, a support agent will be assigned to your request within 24 hours. Follow up communication from the assigned agent will occur within 48 hours.
3. **Standard** – The problem has a minor impact on business. Operations are not adversely affected.
  - **Resolution Handling** – Upon receipt of the initial service request, a support agent will be assigned to your request within 48 hours. Follow up communication from the assigned agent will occur within 72 hours.
4. **Low** – The problem is considered to be an inconvenience. No impact on normal business operations or a work-around is available.
  - **Resolution Handling** – Upon receipt of the initial service request, a support agent will be assigned to your request within 48 hours. Follow up communication from the assigned agent will occur within 72 hours. Issues deemed low, will be added to a future release with expected release date communicated to the customer.
5. **Exceptions** – If the reported issue is to be incorporated into the next Product Release and the customer has been notified of the status, additional follow up will be deferred until a release date has been determined.

## Exhibit C

PharmaForce will maintain during the term of this Agreement the following insurance in at least the amounts below specified.

**(a) Commercial General Liability** insurance written on occurrence basis with the following limits:

General Aggregate Limit	\$2,000,000
Products/Completed Operations	\$2,000,000 aggregate
Personal Injury and Adv. Injury Limit	\$1,000,000 ea. person/organization
Bodily Injury & Property Damage Limit	\$1,000,000 each occurrence
Fire Damage	\$300,000 (any one fire)
Medical Expense	\$15,000 (any one person)

**No exclusions for:** Product/Completed Operations; Contractual Liability; Independent Contractors; Personal & Advertising Injury.

**(b) Automobile Liability:** Any Auto Owned, Hired and Non-Owned

Combined Single Limit for Bodily Injury & Property Damage	\$1,000,000 ea. accident/aggregate
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**(c) Excess "Umbrella" Liability** \$2,000,000 ea. occurrence/aggregate

The umbrella coverage shall be no more restrictive than underlying coverage.

**(d) Workers' Comp. & Employers Liability** Statutory Coverage as required by law

**(e) Network Security and Privacy Liability** insurance in an amount not less than \$2,000,000 occurrence/aggregate with deductible/retention of not more than \$50,000, unless otherwise approved by Customer, covering PharmaForce and its subcontractors engaged in such activities for network and privacy risks including coverage for unauthorized access, failure of security, breach of privacy perils, wrongful disclosure of information, as well as event management costs and regulatory defense.