

Membership Agreement Instructions

NYC REACH MEMBERSHIP AGREEMENT

1. Agreement pg. 8 - Enter practice name, sign, and complete name and title.
2. Agreement pg. 9 - Enter practice name and information, including additional sites as necessary. Please include your best estimate of patient visits, unique patients seen and insurance types. The agreement cannot be completed if these fields are not entered.
3. Agreement pg. 10 - List all MDs, DOs, NPs, and PAs at the practice. Indicate Full (paid) or Limited (free) membership type for each provider, and the Category as described on Agreement pg. 11
4. Agreement pg. 12 - If you already use an EHR with ePrescribing and Quality Reporting, complete this information.

BUSINESS ASSOCIATE AGREEMENT

(included in this document)

1. BAA pg. 1 - Enter date, practice name, and practice location.
2. BAA pg. 8 - Enter practice name, sign, and complete name and title.

Please return the agreement to:

PCIP - Outreach
NYC Health Dept. CN #52
42-09 28th St.
Long Island City, NY 11101-4132

Or by Fax: (347) 396-4920
Or by Email: pcip@health.nyc.gov

Questions? Call (347) 396-4888

FOR INTERNAL USE ONLY

Practice _____ Date _____ Rep/Source _____

**NYC REACH
MEMBERSHIP AGREEMENT**

This Membership Agreement (“Agreement”) is entered into by and between the undersigned practice (the “Practice”), on behalf of itself and each Provider (as defined below) listed following the signature pages hereto and the Fund for Public Health in New York, Inc. (“FPHNY”) acting as the New York City Regional Electronic Adoption Center for Health (“NYC REACH”) (each a “Party”, and collectively, the “Parties”).

NYC REACH is the Regional Extension Center for New York City as designated by the Office of the National Coordinator at the United States Department of Health and Human Services (“US HHS”) pursuant to the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“HITECH Act”). NYC REACH will provide technical assistance, guidance, and information to accelerate priority Primary Care Provider (“PPCP”) and Specialist adoption of electronic health records (“EHRs”) and to support Meaningful Use of EHRs.

The Parties agree that Meaningful Use shall have the same meaning as the one set forth in the rules published by the US HHS Centers for Medicare & Medicaid Services on July 13, 2010 and any future final rule, as amended, that may be promulgated.

NYC REACH services are for PPCPs defined as primary care providers in individual and small group practices (ten or fewer physicians and/or other health care professionals with prescriptive privileges) primarily focused on primary care; and physicians, physician assistants, or nurse practitioners who provide primary care services in public and critical access hospitals, community health centers, rural health clinics, and in other settings that predominantly serve uninsured, underinsured, and medically underserved populations, who practice medicine in the five boroughs of New York City and for Specialists who practice medicine in the five boroughs of New York City.

PPCPs and Specialists (collectively “Providers”) agree to utilize the EHR to achieve Meaningful Use. NYC REACH membership is for those Providers who are already live on an EHR, for those Providers who have not yet adopted EHR systems and will adopt a NYC REACH supported vendor’s system (“Approved Vendor”), and for those Providers who partner with NYC REACH affiliates to assist them in meeting the federal requirement for Meaningful Use, which can qualify Providers for up to \$63,750 over four years. NYC REACH makes no guarantees that Providers will achieve Meaningful Use.

In consideration of the mutual covenants contained in this Agreement and other valuable and good consideration, the Parties do agree to all of the terms and conditions set forth herein and in the Exhibits annexed hereto and made a part hereof as follows:

I. Services

- a) NYC REACH services to PPCPs are provided according to Membership Level pursuant to Section II below and include, but are not limited to:

1. Education – NYC REACH will disseminate knowledge about the effective strategies and practices to select, implement, and meaningfully use certified EHR technology to improve quality and value of healthcare. NYC REACH will provide materials and hold Meaningful Use training events and programs for PPCPs and their support staff.
2. Vendor Selection & Group Purchasing – NYC REACH will assist PPCPs in assessing their health informational technology (“Health IT”) needs and selecting an Approved Vendor for EHR software, network infrastructure, and IT services. NYC REACH has completed an initial procurement process to select a group of vendors for EHR software, network infrastructure, and IT services and negotiated favorable pricing to which Providers are entitled access.
3. Implementation and Project Management – NYC REACH will provide project management support for the EHR implementation process, including individualized coaching, consultation, troubleshooting, and other activities to assist PPCPs in assessing and enhancing their organizational readiness for Health IT, provide best practices in relation to IT infrastructure, ensure adequate software training for all staff, and track and adhere to implementation timelines in trying to achieve Meaningful Use.
4. Practice and Workflow Redesign – NYC REACH will provide support for Practice and will conduct workflow redesign necessary to achieve Meaningful Use. NYC REACH will work with PPCPs and their Approved Vendor to implement and troubleshoot the use of the EHR systems for the consistent documentation of essential clinical information in structured formats by instituting electronic administrative transactions, electronic prescribing, electronic laboratory ordering and resulting, sharing key clinical data across practice settings, providing patient access to their health information, public health reporting, and policies and practices that protect the privacy and security of Protected Health Information (“PHI”).
5. Functional Interoperability and Health Information Exchange – NYC REACH will assist PPCPs in connecting to available health information exchange (“HIE”) infrastructure(s), including local health information exchange organizations and state-based shared utilities or directory services in compliance with applicable statutory and regulatory requirements, patient preferences, and the State Plans for HIE developed and HHS-approved under cooperative agreements issued by the US HHS Office of the National Coordinator for Health Information Technology (“ONC”).
6. Privacy and Security Best Practices – NYC REACH will support PPCPs in implementing best practices with respect to the privacy and security of PHI that are compliant with relevant laws, rules, and regulations, including: implementation and maintenance of physical and network security, access controls, disaster recovery, encryption and storage of backup media, human resources training and policies; and identification of state laws and regulatory

requirements that impact privacy and security policies for electronic interoperable HIE.

7. Progress Towards Meaningful Use – NYC REACH will assist PPCPs by reviewing the utilization of the EHRs within their Practices, and providing appropriate feedback and support to improve low utilization of features essential for Meaningful Use. NYC REACH will work with PPCPs in trying to understand and implement technology and process changes needed to attain Meaningful Use.
- b) NYC REACH services to Specialists will include all non-federally subsidized items under subsection (a) of this section, and any additional services paid for in accordance with Section II(a)(ii) and Section II(a)(iii) below.

II. Fees

All Practices shall pay fees in accordance with the following:

- a) Full Membership.
- i. a membership fee of up to \$600.00 per Provider for assistance with Stage 1 of Meaningful Use (“Membership Fee”). The maximum Membership Fee shall not exceed \$6,000.00 for each FEIN within the Practice;
 - ii. if the Practice is not utilizing an EHR and is contracting with an Approved Vendor, a one-time implementation fee of up to \$1,200.00 per Provider, such fee to be agreed upon by NYC REACH and Practice and based upon the selected Approved Vendor’s pricing package (“Implementation Fee”);
 - iii. for any Specialist, a Meaningful Use curriculum and training fee of \$3,200 per Provider for assistance with Stage 1 of Meaningful Use (“Meaningful Use Curriculum and Training Fee”). This Meaningful Use Curriculum and Training Fee will be used to provide the services listed under Section I for Specialists.
- b) Limited Free Membership. Practices have the option of foregoing Full membership and becoming a Limited Free member of NYC REACH at no cost. Limited Free members do not have full access to the services listed in Section I above without upgrading to Full membership, but may purchase services at a separate one-time cost subject to availability.
- c) PCIP Practices. Practices that have executed a Participation Agreement with the Primary Care Information Project (“PCIP Practices”) shall pay fees in accordance with this subsection II(c).
- i. PCIP Practices within two years of the effective date of their Participation Agreement will have the Membership Fee waived. Upon completion of such two year period, PCIP Practices shall pay fees in accordance with Section II(a) above if selecting Full membership or shall by default become a Limited Free member in accordance with Section II(b) above upon signing this NYC REACH Membership Agreement.

- ii. PCIP Practices who have passed the two year anniversary of the effective date of their Participation Agreement shall pay fees in accordance with Section II(a) or Section II(b) above.
- d) The total fee, including Membership Fee, Implementation Fee, and Meaningful Use Curriculum and Training Fee when applicable, is made payable within thirty (30) days of receipt of invoice by NYC REACH. Such fees shall be paid in the form of a check made payable to the “Fund for Public Health in New York, Inc.” or by such other manner as is acceptable to NYC REACH.
- e) Achievement of any subsequent stage of Meaningful Use may incur additional fees dependent upon what additional services are required of NYC REACH and what is subsidized under any grants.
- f) All fees are non-refundable.

III. Term and Termination

- a) The term of this Agreement will be one (1) year from the Effective Date set forth below (“Term”). Unless terminated earlier pursuant to Sections III(b) or III(c) below, this Agreement shall automatically renew for additional one (1) year terms upon each following anniversary of the Effective Date (“Renewal Term”).
- b) NYC REACH may terminate its services with respect to a Provider upon ten (10) days written notice if such Provider fails to meet any representations within this Agreement (“Provider Termination”). Upon such Provider Termination, all services, including eligibility for NYC REACH programs, for the Provider will terminate upon the date of such Provider Termination. Provider Terminations shall not affect the Agreement with respect to the Practice and its existing Providers.
- c) Either NYC REACH or the Practice may terminate this Agreement with 30 days written notice to the other (“Full Termination”). If this Agreement is terminated by a Full Termination, the Agreement will be deemed terminated with respect to all Providers represented by such Practice.
- d) Any Provider that does not pay applicable fees when due in accordance with Section II above may, in the discretion of NYC REACH, default to a Limited Free member under which no service under Section I will be provided until fees are paid in full.

IV. Representations

- a) Practice represents that demographic information disclosed on Exhibit A attached hereto is true and correct.
- b) Providers listed herein under Exhibit B by the authorized representative of the Practice shall become NYC REACH members upon the Effective Date of this Agreement and

shall be eligible for NYC REACH services according to their chosen membership level after any applicable fees have been paid in full.

- c) Practice agrees to fully cooperate with NYC REACH to achieve “go-live” status within twelve (12) months of executing this Membership Agreement. Practices that have already achieved “go-live” shall complete Exhibit C annexed hereto. In addition, Practice agrees to fully cooperate with NYC REACH on efforts to achieve Meaningful Use as specified by the US HHS Centers for Medicare and Medicaid Services.
- d) If Practice is not live on an EHR system, Practice agrees to contract with an IT Consultant to assist with the installation and maintenance of hardware and network infrastructure which support implementation of Approved Vendor’s EHR. Practice understands that delay in contracting with an IT Consultant may result in a delay in implementation.
- e) The Practice, on behalf of each of its Providers, agrees to provide non-identifiable public health epidemiologic, quality, and utilization data as defined by NYC REACH. Such data is to be EHR derived and remotely transmitted to the New York City Department of Health and Mental Hygiene (“DOHMH”) on a periodic or ad hoc basis as determined by NYC REACH.
- f) Practice agrees that by joining NYC REACH, NYC REACH may, from time to time, disclose to its auditors, ONC, and to other third parties such Practice’s and its Providers’ participation in NYC REACH.
- g) NYC REACH reserves the right to modify support provided to Practices that have chosen to utilize a vendor other than an Approved Vendor.
- h) In providing services, NYC REACH may inadvertently acquire or access PHI. The Parties agree that, in relation to PHI and any other data or information governed by HIPAA, they are bound by a separate Business Associate Agreement to be executed pursuant to this section.

V. Notices

Any notice pursuant to this Agreement shall be given or made to the respective parties, as follows:

For NYC REACH:

Pareeta Nalluswami
Associate Director of Outreach, Primary Care Information Project
New York City Department of Health and Mental Hygiene
42-09 28th Street, CN#52
Long Island City, NY 11101-4132

With a copy to:

Sara W. Gardner
Executive Director
Fund for Public Health in New York, Inc.
On behalf of NYC REACH
22 Cortlandt Street, Suite 1103
New York, NY 10007-3160

For the Practice: All notices will be sent to the attention of the authorized representative signing on behalf of the Practice below.

Any notices and communications given or made pursuant to this Agreement shall be delivered, mailed, electronically or otherwise, or faxed and mailed to said representatives, or such other representatives that the parties designate in writing.

VI. Miscellaneous

- a) Practice and its Providers covenant and agree that neither it nor its employees nor its agents will hold themselves out as, nor claim to be, officers or employees of FPHNY, NYC REACH or the City of New York (the "City"), or of any department, agency or unit thereof, by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of FPHNY, NYC REACH or the City, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or employee benefits, retirement membership or credit.
- b) Practice agrees that it shall hold harmless FPHNY and the City for costs, legal fees, judgments, incidental and consequential damages, penalties or any other monetary claims asserted by any federal, state or local governmental entity or any other third party against FPHNY or the City which arises out of or relates to Practice's or any of its Providers' failure to fully, properly or lawfully perform its obligations under this Membership Agreement.
- c) This Agreement shall be governed, construed, applied and enforced in accordance with the laws of the State of New York. Any claim which arises or is related to this Membership Agreement shall be heard either in a Federal Court located in New York City or in a New York State Court located in New York City.
- d) This Agreement constitutes the entire understanding of the parties and merges all prior discussions, agreements, or understandings into it. No prior agreement, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or to bind any of the parties hereto.

- e) This Agreement may, from time to time, be modified by a writing signed by authorized representatives of the Parties. It may not be altered, modified, rescinded, or extended orally.
- f) Each Party agrees that it shall not assign, transfer, convey or otherwise dispose of this Agreement, except by operation of law, without the prior written consent of the other Parties, except that NYC REACH may assign this Agreement to DOHMH without the prior written consent of any Party.
- g) This Agreement shall be binding upon and for the benefit of the Parties and each of their respective successors and permitted assigns. The provisions of this Agreement shall be for the sole benefit of the Parties and no other person or entity.
- h) This Agreement may be executed in one or more counterparts which, when taken together, shall constitute one and the same.

******SIGNATURE PAGE FOLLOWS******

FOR INTERNAL USE ONLY

IN WITNESS, WHEREOF, the Parties hereto have duly executed this NYC REACH Membership Agreement, which includes the Exhibits annexed hereto and made a part hereof, as of the ____ day of _____, 20__ (“Effective Date”).

PRACTICE NAME: _____

FUND FOR PUBLIC HEALTH IN NEW YORK, INC. ON BEHALF OF NYC REACH

Signature: _____

Signature: _____

Name: _____

Name: Sara W. Gardner

Title: _____

Title: Executive Director

Exhibit A

1) Practice name: _____

Primary Site Address (incl. city, state, and zip): _____

Telephone Number: _____

Fax number: _____

FEIN (Tax ID): _____

Group NPI: _____

Entity Type Private practice
(please select one): Community health center
 Hospital

For entity, estimate the number of:

Total number of unique patients: _____

Total number of all patient encounters: _____

***For entity, estimate:**

Percentage of patients on Medicare including Medicare Managed care: _____

Percentage of patients on Medicaid or other state-sponsored programs including Medicaid Managed Care: _____

Percentage of patients using commercial managed care (excluding Medicaid & Medicare Managed Care): _____

Percentage of patients using commercial insurance (excluding managed care): _____

Percentage of patients that are uninsured: _____

**** Total must equal 100%***

2) Name of Additional Site (if applicable): _____

Additional Site Address
(incl. city, state, and zip): _____

Telephone Number: _____

Fax Number: _____

3) Name of Additional Site (if applicable): _____

Additional Site Address
(incl. city, state, and zip): _____

Telephone Number: _____

Fax Number: _____

Please attach additional pages as necessary.

PLEASE INCLUDE ALL PROVIDERS AT EACH OF YOUR SITES IN THE CHART BELOW AND INDICATE CATEGORY (SEE FOLLOWING PAGE) AND MEMBERSHIP TYPE (“FULL” OR “FREE”) FOR EACH PROVIDER. PLEASE ATTACH ADDITIONAL PAGES OR SPREADSHEET AS NECESSARY.

	Name	MD, DO, NP, or PA	NYS License #	Provider NPI#	Specialty	Main Site (from above)	Email address	Category (1, 2, or 3)	Membership Type
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									

Category 1: All licensed doctors of medicine or osteopathy, as well as physician assistants and nurse practitioners with prescriptive privileges, practicing family practice, obstetrics and gynecology, general internal medicine, adolescent health, geriatrics, or pediatric medicine for all their patients at the site listed.

** Note- by selecting Category 1, providers are attesting to the fact that they are considered primary care providers.*

Category 2: All licensed doctors of medicine or osteopathy, as well as physician assistants and nurse practitioners with prescriptive privileges, who may be licensed in an internal medicine or pediatric subspecialty but provide primary care/general medicine for at least 50% of their patients at the site listed.

** Note- by selecting Category 2, providers are attesting that they are providers who, regardless of their Internal Medicine or Pediatric subspecialty, provide primary care to most of their patients.*

Category 3: All other types of physicians, physician assistants, and nurse practitioners with prescriptive privileges (e.g. specialists that do not fall under Category 2, social workers, mental health specialists).

** Note- by selecting Category 3, providers are attesting that they provide primary care services to fewer than 50% of their patients.*

ONLY CATEGORY 1 AND CATEGORY 2 PROVIDERS ARE ELIGIBLE FOR FEDERALLY SUBSIDIZED SERVICES IN SECTION I(a).

CATEGORY 3 PROVIDERS ARE ELIGIBLE FOR SERVICES UNDER IN SECTION I(a) ONLY IF THEY PAY THE MEANINGFUL USE CURRICULUM AND TRAINING FEE OUTLINED IN SECTION II(a)(iii) OF THE NYC REACH MEMBERSHIP AGREEMENT.

Exhibit C

MILESTONE 2 ACHIEVEMENTS

PLEASE FILL OUT THIS ATTESTATION IF YOU HAVE ALREADY BEEN IMPLEMENTED ON AN ELECTRONIC HEALTH RECORD SYSTEM. IF YOU DO NOT KNOW THE EXACT DATES, PLEASE PROVIDE YOUR BEST ESTIMATE.

NYC REACH and the Practice, on behalf of their Providers, hereby attest that the Practice and, where applicable, each of its Providers listed in this Agreement, as may have been amended from time to time in Addendum A, has:

1) Signed an End User Agreement with the Vendor as of the ____ day of _____, 20____.

2) Completed implementation or achieved "go-live" status on _____
(name and version of EHR system) as of the ____ day of _____, 20____.

3) Used the EHR system to ePrescribe as of the ____ day of _____, 20____.

4) Generated quality reports as of the ____ day of _____, 20____.

BUSINESS ASSOCIATE AGREEMENT

This Agreement (“Agreement”) dated as of _____, 20__ (“Effective Date”) between _____, with a primary office at _____ (“Covered Entity”) and the New York City Department of Health and Mental Hygiene (“DOHMH”), with a primary office at Gotham Center, 42-09 28th Street – CN#52 , Long Island City, NY 11101-4132 and the Fund for Public Health of New York, Inc. d/b/a NYC REACH (“NYC REACH”), with a primary office at 291 Broadway, 17th Floor, New York, NY 10007 (together, the “Business Associates”) (each a “Party”, collectively, the “Parties”).

RECITALS

WHEREAS, DOHMH and NYC REACH are collaborating to promote the dissemination and use of electronic health records (“EHR”) by primary care physicians in the City of New York;

WHEREAS, DOHMH procured a contractor to develop EHR software;

WHEREAS, DOHMH owns the license for such EHR software and has been distributing conditional licenses to various medical practices through an agreement with the same (“Participation Agreements”);

WHEREAS, NYC REACH has acquired certain funds from a grant issued through the American Recovery and Investment Act of 2009 (“ARRA”);

WHEREAS, NYC REACH will utilize the ARRA funds to pay for staff who will provide technical and other assistance to practices in order for them to achieve, among other things, Meaningful Use of EHRs (as defined by the United States Department of Health and Human Services (“HHS”) Centers for Medicare & Medicaid Services) ;

WHEREAS, NYC REACH will provide its services to practice through an agreement with the same (“Membership Agreement”);

WHEREAS, the Covered Entity has entered into either or both of the PCIP Participation Agreement with DOHMH or NYC REACH Membership Agreement with the Fund for Public Health of New York, Inc. d/b/a NYC REACH;

WHEREAS, DOHMH and/or NYC REACH may, in working with aggregated de-identified data from the Covered Entity, inadvertently access or obtain Protected Health Information in the course of providing their services;

NOW, THEREFORE, in consideration of the mutual promises herein, the Parties agree as follows:

I. Definitions

Except as otherwise defined herein, any and all terms used in this Agreement shall have the same meaning as those terms in the Privacy Rule. As used in this Agreement, the following terms shall have the following meanings:

- (a) “Agreement” shall mean the Health Insurance Portability and Accountability Act Business Associate Contract Provisions constituting this Agreement.
- (b) “Breach” shall have the meaning given to such term under the HITECH Act, 42 U.S.C §17921.
- (c) “Business Associates” shall mean both DOHMH and NYC REACH with each a “Business Associate.”
- (d) “Covered Entity” shall mean the practice whose name is first set forth above or its Health Care Component(s) (as defined in 45 CFR §164.103) as applicable.
- (e) “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191, and the regulations promulgated thereunder, as they may be amended. It includes the obligations under the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009 and its related regulations. (the “HITECH Act”).
- (f) “Individual” shall have the same meaning as the term "individual" in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- (g) “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A, C and E.
- (h) “Protected Health Information” shall have the same meaning as the term "protected health information" in 45 CFR §160.103 and §164.01 , limited to the information created or received by Business Associate from or on behalf of Covered Entity. Protected Health Information includes Electronic Protected Health Information.
- (i) “Required by Law” shall have the same meaning as the term "required by law" in 45 CFR §164.103.
- (j) “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
- (k) “Security Rule” shall mean those requirements set forth in 45 CFR §§ 164.308, 164.310, 164.312, 164.314, and 164.316.
- (l) “Services Contracts” shall mean either the Membership Agreement, or the Participation Agreement, or both depending on which ones are indicated in the Recitals.

II. Obligations and Activities of Business Associate

- (a) Permitted Uses: Business Associates agree not to use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required by Law.

(b) **Appropriate Safeguards:** Business Associates agree to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement. This includes but is not limited to, administrative physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the protected information in accordance with the Security Rule.

(c) **Reporting:** Business Associates agree to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware as soon as reasonably practicable, regardless of whether it rises to a level of a breach. In no case can this reporting be later than 60 calendar days after discovery.

(d) **Mitigation:** Business Associates agree to mitigate, to the extent practicable, any harmful effect that is known to a Business Associate of a use or disclosure of Protected Health Information by a Business Associate in violation of the requirements of this Agreement.

(e) **Business Associate Agents:** Business Associates agree to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by a Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to a Business Associate with respect to such information.

(f) **Designated Record Sets:** Business Associates agree to provide access, at the request of Covered Entity, and in the time and manner designated by the Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524, if a Business Associate has Protected Health Information in a Designated Record Set.

(g) **Amendment of PHI:** Business Associates agree to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by the Covered Entity, if a Business Associate has Protected Health Information in a Designated Record Set.

(h) **Government Access to Records:** Business Associates agree to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Protected Health Information received from, or created or received by a Business Associate on behalf of, Covered Entity available to the Covered Entity, and to the Secretary, in the time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

(i) **Documentation of Disclosures:** Business Associates agree to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.

(j) **Accounting of Disclosures:** Business Associates agree to provide to Covered Entity or an Individual, in the time and manner designated by the Covered Entity, information collected in accordance with paragraph (i) of this Section II of this Agreement, to permit Covered Entity to

respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.

(k) Security: Business Associates agree to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.

(l) Safeguards of agents: Business Associates agree to ensure that any agent, including a subcontractor, to which it provides electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect such Protected Health Information.

(m) Reporting: Business Associates agree to report to the Covered Entity any security incident of which a Business Associate becomes aware as soon as reasonably practicable.

III. Permitted Uses and Disclosures by Business Associate

(a) Use and Disclosures: Except as otherwise limited in this Agreement, Business Associates may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity, provided that such use or disclosure would not violate the Privacy Rule or Security Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

(b) Stated purpose for use and disclosure: Except as otherwise limited in this Agreement, Business Associates may use and disclose PHI to perform their obligations under the Services Contracts, and the Business Associates are permitted to disclose Protected Health Information received from the Covered Entity for purposes of payment and health care operations.

(c) Management and Administration of Business Associate: Except as otherwise limited in this Agreement, Business Associates may use Protected Health Information for the proper management and administration of the Business Associates or to carry out the legal responsibilities of the Business Associates.

(d) Except as otherwise limited in this Agreement, Business Associates may disclose Protected Health Information for the proper management and administration of the Business Associates, provided that disclosures are Required by Law, or Business Associates obtain reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associates of any instances of which it is aware in which the confidentiality of the information has been breached.

(e) Data Aggregation: Except as otherwise limited in this Agreement, Business Associates may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B).

(f) Violations of law: Business Associates may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1).

IV. Obligations of Covered Entity

- (a) Covered Entity shall notify Business Associates of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect a Business Associate's use or disclosure of Protected Health Information.
- (b) Covered Entity shall notify Business Associates of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect a Business Associate's use or disclosure of Protected Health Information.
- (c) Covered Entity shall notify Business Associates of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect a Business Associate's use or disclosure of Protected Health Information.
- (d) Covered Entity shall use reasonable and appropriate safeguards to maintain and ensure the confidentiality, privacy and security of the Protected Health Information transmitted to or received from the Business Associates.

V. Permissible Requests by Covered Entity

Covered Entity shall not request the Business Associates to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. Nothing in this Section V shall be construed to affect or limit a Business Associate's right to use or disclose Protected Health Information as provided in paragraphs (b), (c), and (d) of Section III of this Agreement.

VI. Term and Termination

- (a) **Term.** The Term of this Agreement shall be effective as of the Effective Date and shall terminate upon the termination of either of the Service Contracts after which time all of the Protected Health Information provided by Covered Entity to the Business Associates, or created or received by Business Associates on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, the protections are extended indefinitely to such Protected Health Information.
- (b) **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by a Business Associate of any of the terms and conditions of this Agreement, Covered Entity shall either:
 - (1) Provide an opportunity for the Business Associate to cure the breach or end the violation and terminate the Agreement to which this is an Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - (2) Immediately terminate this Agreement with relation to a Business Associate if that Business Associate has breached a material term of this Agreement and cure is not possible; or

(3) If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.

(c) Effect of Termination.

(1) Except as provided in paragraph (2) of this subsection, if this Agreement is terminated for any reason, a Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of either Business Associate. Business Associates shall retain no copies of the Protected Health Information.

(2) In the event that a Business Associate determines that returning or destroying the Protected Health Information is infeasible, that Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon receipt by Covered Entity of such notification that return or destruction of Protected Health Information is infeasible, that Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as that Business Associate maintains such Protected Health Information.

(3) If this Agreement is terminated as to one Business Associate and not the other, the Agreement shall remain in full effect with regards to the remaining Business Associate.

VII. Miscellaneous

(a) Regulatory References. A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.

(b) Amendment. The Parties agree to take such action necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA, and all subsequent laws and regulations bearing on the subject matter of this Agreement.

(d) Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Section VI(c), Section VII(a) and (f), and Section II (solely with respect to Protected Health Information that Business Associate retains in accordance with Section VI(c) where it is not feasible to return or destroy such Protected Health Information), shall survive the expiration or termination of this Agreement.

(e) Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule and Security Rule.

(f) 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.

(g) This Agreement may be executed in counterparts, all of which counterparts, when taken together, shall be deemed a fully executed instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE FOLLOWS]

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

PRACTICE NAME (COVERED ENTITY):

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

FUND FOR THE PUBLIC HEALTH OF NEW YORK, INC. d/b/a NYC REACH

Signature: _____

Name: _____

Title: _____