

Please send this form back to Parachute Health once completed by FAX at (917) 477-2115 or EMAIL support@parachutehealth.com

## FACILITY PLATFORM ACCESS AGREEMENT

This Facility Platform Access Agreement (“**Agreement**”) is entered into effective as of the date set forth on the signature page (“**Effective Date**”), by and among Parachute Health, LLC, a New York limited liability company, located at 15 West 18<sup>th</sup> Street, 6<sup>th</sup> Floor, NY, NY 10011 (the “**Company**”) and the facility listed on the signature page hereto, (“**Facility**”). The Company, on the one hand, and Facility, on the other hand, are each referred to individually as a “**Party**” and together as the “**Parties**.”

WHEREAS, the Company operates a proprietary technology platform that assists in the electronic submission and processing of orders of, among other things, durable medical equipment, Prosthetics, Orthotics, Suppliers or other related services (“**DME**”); and

WHEREAS, Facility is a licensed healthcare facility under applicable law and desires to access and use the Company’s proprietary platform to assist in its processing of DME; and

WHEREAS, the Company is willing to provide Facility with access and use of its proprietary platform on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the covenants, promises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### 1. DEFINITIONS

1.1 Defined Terms. For the purposes of this Agreement, the following terms shall have the meanings hereinafter specified:

“**Affiliate**” means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

“**Authorized User**” means any of Facility’s current employees, consultants, or agents whom Facility authorizes to access and use the Platform pursuant to the terms and conditions of this Agreement; provided, however, that any consultants’ or agents’ access and use of the Platform shall be limited to their provision of services to Facility.

“**Destructive Elements**” means computer code, programs, or programming devices that are intentionally designed to disrupt, modify, access, delete, damage, deactivate, disable, harm, or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation of the Platform or any other associated software, firmware, hardware, computer system, or network (including “Trojan horses,” “viruses,” “worms,” “time bombs,” “time locks,” “devices,” “traps,” “access codes,” or “drop dead” or “trap door” devices).

“**Facility Data**” means any data that Facility or its Authorized Users submit to the Platform, including any data concerning any orders.

“**Facility’s Network**” means the hospitals, nursing and rehab centers, sleep labs, home health agencies, or any other locations, as applicable, that is an Affiliate of Facility, where a patient may be treated by a Practitioner and a Practitioner may generate an order for a patient as listed on Schedule A hereto.

“**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996, 104 P.L. 191, Subtitle F, and regulations from time to time promulgated thereunder.

“**Improvements**” means any modifications, improvements, inventions, adaptations, enhancements, or translations relating to the Platform.

“**Law**” means any statute, law, ordinance, regulation, rule, writ, code, order, treaty, decree, directive or other requirement of any foreign, federal, state or local government or political subdivision thereof, or any court or tribunal of competent jurisdiction.

“**Person**” means any individual, corporation, partnership, limited liability company, governmental authority, association, trust, or other entity.

“**Platform**” means the Company’s proprietary, cloud-based platform that assists in the electronic submission and processing of patient orders.

“**Practitioner**” means a licensed health care practitioner authorized to order DME for a patient.

“**Prohibited Content**” means content that: (a) is illegal under applicable Law; (b) violates any third party’s copyrights, trademarks, patents, trade secrets and other intellectual property rights; (c) contains indecent or obscene material; (d) contains libelous, slanderous, or defamatory material, or material constituting an invasion of privacy or misappropriation of publicity rights; (e) promotes unlawful or illegal goods, services, or activities; (f) contains false, misleading, or deceptive statements, depictions, or sales practices; or (g) contains Destructive Elements.

“**Services**” means the hosting, management and operation of the Platform for remote electronic access and use by Facility and its Authorized Users.

1.1 Interpretation; Exhibits and Schedules. The titles, headings and captions contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Unless otherwise indicated to the contrary herein by the context or use thereof: (a) the words “hereof,” “hereby,” “herein,” “hereto,” and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular Section or paragraph of this Agreement; (b) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (c) masculine gender shall also include the feminine and neutral genders, and vice versa; (d) words importing the singular shall also include the plural, and vice versa; (e) references to a “Section,” “Schedule” or “Exhibit” shall be to a Section of, or a Schedule or Exhibit to this Agreement; (f) any agreement, instrument or Law defined or referred to in this Agreement shall mean such

agreement, instrument or Law as from time to time amended, supplemented or otherwise modified; (g) all Exhibits and Schedules to this Agreement are hereby incorporated in and made a part of this Agreement as if set forth in full herein, and any capitalized terms used in such Exhibits and Schedules and not otherwise defined therein shall have the meaning set forth in this Agreement; (h) “writing,” “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form; (i) the sign “\$” means the lawful currency of the United States of America; (j) all references to “days” mean calendar days and all references to time mean Eastern Time in the United States of America, in each case unless otherwise indicated; and (k) derivative forms of defined terms will have correlative meanings. The Parties acknowledge that each Party and its attorney has reviewed and participated in the drafting of this Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party, or any similar rule operating against the drafter of an agreement, shall not be applicable to the construction or interpretation of this Agreement.

## 2. PROVISION OF SERVICES

2.1 **Services.** Subject to the terms and conditions of this Agreement, during the Term, the Company shall provide the Services to Facility. The Company shall use commercially reasonable efforts to make the Platform accessible twenty four (24) hours per day, seven (7) days per week, 99% of the time as measured over the course of each quarter during the Term, except for: (a) scheduled downtime for routine maintenance; (b) required repairs; (c) any loss or interruption due to a Force Majeure Event; (d) any other circumstances beyond the Company’s reasonable control, include Facility’s or any Authorized User’s use of the Platform and the Services other than in compliance with the terms of this Agreement; and (e) any suspension or termination of Facility’s or any Authorized Users’ access to or use of the Platform as permitted by this Agreement.

2.2 **Modifications.** The Company reserves the right, in its sole discretion, to make any changes to the Platform or the Services that it deems necessary or useful to (a) maintain or enhance (i) the quality or delivery of the Company’s services to its customers, including to improve the user experience, (ii) the competitive strength of or market for the Company’s services, or (iii) the cost efficiency or performance of the Services; or (b) to comply with applicable Law.

2.3 **Customer Support.** Support will be available from 9:00 AM to 9:00 PM, Eastern Time, Monday through Friday, excluding U.S. national holidays. Live support submitted through the Platform will be provided during support hours only. The Company attempts to respond to support questions within one (1) business day, although it does not promise or guarantee any specific response time.

2.4 **Service Management.** Each of the Company and Facility shall, throughout the Term, maintain within its organization a service manager to serve as such Party’s primary point of contact for day-to-day communications, consultation and decision-making regarding the Services. Each service manager shall be responsible for providing all day-to-day consents and approvals on behalf of such Party under this Agreement. Each of the Company and Facility shall ensure its service manager has the requisite organizational authority, skill, experience and other

qualifications to perform in such capacity. If either the Company's service manager or Facility's service manager ceases to be employed by such Party or such Party otherwise wishes to replace its service manager, such Party shall promptly name a new service manager by written notice to the other Party.

2.5 **Cooperation.** Facility acknowledges that the Company's ability to implement and provide the Services is dependent on Facility's providing the Company complete, accurate, up-to-date, and timely Facility Data and other information and materials necessary to provide the Services or otherwise required by the Company. Facility agrees to reasonably cooperate with and assist the Company, to provide to the Company the Facility Data and such other information and materials, and to cause Facility's personnel (including Authorized Users) and third-party service providers to do the same.

### 3. AUTHORIZED USERS

3.1 **Onboarding.** Authorized Users must log into the Platform. During the initial registration, Authorized Users will be prompted to create an account, which includes a sign-in name ("**Sign-In Name**"), a password ("**Password**"), and perhaps certain additional information that will assist in authenticating the Authorized User's identity when he or she logs-in in the future ("**Unique Identifiers**" and, together with the Sign-In Name and Password, "**Access Credentials**"). When creating the account, Authorized Users must provide true, accurate, current, and complete information.

3.2 **Access Credentials.** Facility is solely responsible for the confidentiality, security and use of Authorized Users' Access Credentials, as well as for any communications entered through the Platform using such Access Credentials. Facility is solely responsible for maintaining the accounts registered to its organization, including adding or removing an Authorized User, deactivating a Password or Sign-In Name or changing any Unique Identifier. Notwithstanding the foregoing, the Company reserves the right to delete or change Authorized Users' Access Credentials at any time and for any reason. If Facility becomes aware of any unauthorized use of Authorized Users' Access Credentials or account, Facility agrees to promptly, and in no event later than within twenty-four (24) hours, notify the Company thereof. Facility is responsible for the acts and omissions of its Authorized Users and any other Person who accesses and uses or misuses the Platform using any of Facility's or its Authorized Users' Access Credentials. The Company will not be liable for any loss or damage caused by any unauthorized use of an Authorized User's Access Credentials or account.

3.3 **Accuracy of Information.** Facility attests to the accuracy of information entered into the Platform by its Authorized Users (including facility staff). Facility acknowledges and agrees that the Company does not provide recommendations related to the appropriateness of any order or plan of care. Parachute Health is required to transmit DME orders to the DME suppliers exactly as the information is presented by the ordering practitioner.

#### 3.4 **Contact Information.**

- (a) Upon request by the Company, Facility shall provide the Company with the names and contact information of Authorized Users (including

Facility staff) at the applicable Facility assisting Practitioners with entering orders on the Platform. Facility acknowledges and agrees that the foregoing contact information shall be accurate and correct.

- (b) Facility shall be responsible for notifying each such Authorized User that (i) such Authorized User's name and contact information has been provided to the Company for use in connection with the provision of Services hereunder, and (ii) such Authorized User is required to comply with the terms of this Agreement. Facility shall cause each Facility, as applicable, to notify the Company in the event any Authorized User objects to any of the foregoing provisions.

#### 4. LIMITATIONS ON USE

4.1 **Restrictions on Use.** Facility will not (and will not authorize or knowingly permit any third party to): (a) allow anyone other than Authorized Users to access and use the Platform; (b) reverse engineer, decompile, disassemble, decode or otherwise attempt to discern or obtain access to the source code or interface protocols of the Platform, in whole or in part; (c) modify, create derivative works of, adapt, or translate the Platform; (d) make any copies of the Platform; (e) rent, lease, resell, distribute, sublicense or otherwise make available the Platform to any Person; (f) remove, alter or obscure any proprietary markings or restrictive legends placed on the Platform; (g) develop a service or program having any functional attributes, visual expressions, or other features similar to those of the Platform; (h) introduce, upload, or transmit to or through the Platform any Prohibited Content; or (i) otherwise access or use the Platform in violation of any applicable Law or for any purpose not specifically permitted in this Agreement.

4.2 **Compliance.** The Company has the right to monitor Facility's compliance with this Agreement. If any such monitoring reveals that Facility (including any of its Authorized Users) is not using the Platform in compliance with this Agreement, then Facility will remedy any such non-compliance within five (5) business days of receiving notice from the Company, including, if applicable, through the payment of additional Fees.

#### 5. FACILITY RESPONSIBILITIES

5.1 **Facility Equipment.** Facility shall be responsible for obtaining, maintaining and protecting the security of any information technology infrastructure and equipment and ancillary services necessary for it to connect to, access or otherwise use the Platform and Services, including computers, software, hardware, servers, databases, operating systems, networks, data communications lines and the like (collectively, "**Facility Equipment**").

5.2 **Monitor Order Requests.** Facility represents that the information entered into the Platform by its Authorized Users shall be accurate. Facility is responsible for ensuring that all authorized Practitioners have sole and final responsibility for reviewing DME orders.

5.3 **Privacy and Security.** Facility, including its Authorized Users (including facility staff), shall comply with all applicable privacy and security Laws.

5.4 **Feedback.** Facility agrees to provide both positive and negative feedback, comments, and suggestions (“**Feedback**”) with respect to the Platform and the Services, as currently conducted or as proposed to be conducted so that the Company may improve and optimize the Platform and the Services.

5.5 **Emergency Information.** Facility understands that emergency contact information for Facility’s patients may be entered into the Platform, and that Company may have to contact those emergency contacts for assistance with completing any orders. Facility represents that it has obtained necessary consents for this use of emergency information.

5.6 Except as expressly set forth herein, Facility will pay and is responsible for all expenses incurred by it in connection with its activities under this Agreement.

## 6. FEES AND PAYMENT

6.1 **Fees.** The parties acknowledge and agree that the consideration given and received by the parties hereunder is non-monetary and Facility shall not be responsible for the payment of any fee to Parachute for the Services provided hereunder.

## 7. TERM

7.1 The initial term of this Agreement shall commence on the Effective Date and, unless earlier terminated in accordance with the terms of this Agreement, shall terminate on the one-year anniversary of the Effective Date (the “**Initial Term**”).

7.2 Following the end of the Initial Term, unless earlier terminated in accordance with the terms of this Agreement, the term of this Agreement shall automatically renew for successive one-year periods (each, a “**Renewal Term**” and, collectively with the Initial Term, the “**Term**”) unless and until a Party provides written notice to the other Party no later than sixty (60) days prior to the end of the Initial Term or applicable Renewal Term, as the case may be, of its intent not to renew this Agreement.

## 8. FACILITY DATA; USE OF DATA AND FEEDBACK

8.1 **Facility Data.** The Company will use the Facility Data only to provide the Services and only as permitted by this Agreement and the Business Associate Agreement attached hereto as Exhibit B. Facility shall have sole responsibility and liability for the accuracy, quality, and legality of the Facility Data.

8.2 **Data Security.** The Company shall employ commercially reasonable physical, administrative, and technical safeguards to secure the Facility Data on the Platform from unauthorized use or disclosure.

8.3 **Aggregated Data.** The Company may monitor the performance and use of the Platform by all of the Company’s customers and create data based on such activities (the “**Usage Data**”), combine the Usage Data with other data (including Facility Data), and use such combined data in an aggregate and anonymous manner. Facility hereby agrees that the Company may collect, use, and publish such aggregated data for the purpose of creating aggregated and

anonymized statistics regarding the Company's customer base. Examples of the Company's use of such aggregate data include, but are not limited to, statistics aggregated across all of the Company clients on metrics such as size of data sets, the number of users of the Platform, revenue, number of transactions, and growth rates.

8.4 **Use of Feedback.** Facility agrees that the Company shall be free to use, reproduce, disclose, and otherwise exploit any and all Feedback provided pursuant to Section 5.6 or otherwise, without compensation or attribution to Facility.

## 9. INTELLECTUAL PROPERTY

All right, title, and interest in and to the Platform and the Usage Data, including all Improvements, and all intellectual property rights therein, shall be and remain the Company's sole and exclusive property. Subject to Section 8.1 and Section 8.3, all right, title, and interest in and to Facility Data, and all intellectual property rights therein, shall be and remain Facility's sole and exclusive property.

## 10. CONFIDENTIALITY

10.1 **Confidential Information.** In connection with this Agreement, each Party (the "**Disclosing Party**") may disclose or make available Confidential Information to the other Party (the "**Receiving Party**"). For the purposes of this Agreement, subject to Section 10.2, "**Confidential Information**" means any confidential or other proprietary information of the Disclosing Party and its Affiliates, including information relating to the Disclosing Party's operations, financial information, forecasts, business, marketing and product development plans, customers, suppliers, strategies, know-how, properties and pricing, and other information with respect to which the Disclosing Party or its Affiliates has confidentiality obligations, in each case, whether disclosed orally, in writing or in any other manner. For the avoidance of doubt, (a) the Platform and any and all source code relating thereto, are Confidential Information of the Company, (b) Facility Data is Confidential Information of Facility, and (c) the terms and conditions of this Agreement are Confidential Information of each Party.

10.2 **Exclusions.** Notwithstanding the foregoing in Section 10.1, Confidential Information does not include information that: (a) is or becomes public knowledge without any action by, or involvement of, the Receiving Party; (b) is documented as being known to the Receiving Party free of any obligation of confidence prior to the time of disclosure; (c) is independently developed by the Receiving Party without use of Confidential Information of the Disclosing Party; provided that the Receiving Party substantiates such independent development with contemporaneous documents; or (d) is obtained by the Receiving Party without restrictions on use or disclosure from a third party

10.3 **Protection.** The Receiving Party will: (a) protect the confidentiality of the Disclosing Party's Confidential Information using at a minimum the same degree of care that it uses with its own confidential and proprietary information of similar nature, but with no less than reasonable care; (b) not use any of the Disclosing Party's Confidential Information for any purpose outside the scope of this Agreement; and (c) not disclose the Disclosing Party's Confidential Information to any Person other than its employees, contractors, advisors, agents,

and actual or potential investors or acquirers who are bound by obligations of confidentiality at least as restrictive as those set forth in this Agreement.

10.4 **Compelled Disclosure.** If the Receiving Party is legally compelled to disclose any of the Disclosing Party's Confidential Information, the Receiving Party will provide the Disclosing Party prompt written notice of such requirement prior to making any such disclosure so that the Disclosing Party may seek a protective order or other appropriate remedy from the proper remedy and/or waive compliance with the terms of this Section 10. The Receiving Party agrees to reasonably cooperate with the Disclosing Party in seeking such order or other remedy. If such protective order or other remedy is not obtained or the Disclosing Party waives compliance with the provisions of this Section 10, the Receiving Party may furnish only that portion of the Confidential Information that it is advised by counsel is legally required to be disclosed, and will use its commercially reasonable efforts to obtain reliable assurances that confidential treatment will be accorded to such disclosed portion of the Confidential Information.

## 11. REPRESENTATIONS AND WARRANTIES; DISCLAIMER

11.1 **Mutual Representations and Warranties.** Each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing, and in good standing under its jurisdiction of organization and has the right to enter into this Agreement; (b) the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby are within the corporate powers of such Party and have been duly authorized by all necessary corporate action on the part of such Party, and constitute a valid and binding agreement of such Party; and (c) it has the full power, authority, and right to perform its obligations and grant the rights it grants hereunder.

11.2 **Facility Representations and Warranties.** Facility represents and warrants that neither Facility shall enter into any improper or unlawful financial relationships with any supplier.

11.3 **Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 12.1, THE SERVICES, THE PLATFORM, THEIR COMPONENTS, AND ANY OTHER MATERIALS PROVIDED HEREUNDER ARE PROVIDED "AS IS" AND "AS AVAILABLE," AND NEITHER PARTY MAKES ANY WARRANTIES WITH RESPECT TO THE SAME OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT AND HEREBY DISCLAIMS ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, ERROR-FREE OR UNINTERRUPTED OPERATION, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. COMPANY MAKES NO WARRANTIES WITH RESPECT TO ANY PLAN OF CARE, OR ORDER MADE THROUGH THE PLATFORM. TO THE EXTENT THAT EITHER PARTY MAY NOT AS A MATTER OF APPLICABLE LAW DISCLAIM ANY IMPLIED WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

## 12. LIMITATION OF LIABILITY



EXCEPT IN CONNECTION WITH FACILITY'S BREACH OF SECTION 4.1 OR SECTION 11.2, OR FACILITY'S FAILURE TO PAY ANY AMOUNTS DUE AND OWING: (A) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PARTY FOR LOST REVENUES OR LOST PROFITS, OR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF; AND (B) EACH PARTY'S AGGREGATE LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT WILL NOT EXCEED \$10,000.

### **13. INDEMNIFICATION**

**13.1 Indemnification by Company.** Subject to Section 13.2, the Company will indemnify, defend and hold harmless Facility and its officers, directors, managers, employees and agents from and against any and all losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) (collectively, "**Losses**") incurred by Facility and its indemnitees in connection with any third-party action, suit, claim, or proceeding to the extent such Losses arise out of (i) any allegation that the use of the Platform in accordance with this Agreement infringes or misappropriates any third-party copyrights or trade secrets; or (ii) any grossly negligent acts, omissions or intentional acts of the Company.

**13.2 Exceptions to Company's Indemnification Obligations.** The Company is not obligated to indemnify, defend or hold harmless hereunder Facility or any third party to the extent: (a) the claim arises from or is based upon (i) Facility's or any of its Authorized Users' use of the Platform not in accordance with the documentation or this Agreement; or (ii) any unauthorized modifications, alterations, or implementations of the Platform made by Facility or at Facility's request (other than by the Company); (b) the claim arises from use of the Platform in combination with unauthorized modules, apparatus, hardware, software, or services not supplied or specified in writing by the Company; or (c) the claim arises from any use of the Platform for which they were not designed.

**13.3 Infringement Claims.** In the event that the Company reasonably determines that the Platform is likely to be the subject of a claim of infringement or misappropriation of third-party rights, the Company shall have the right (but not the obligation), at its own expense and option, to: (a) procure for Facility the right to continue to use the Platform as set forth hereunder; (b) replace the infringing components of the Platform with other components with the equivalent functionality; or (c) modify the Platform so that it is non-infringing and functionally equivalent. If none of the foregoing options is commercially practicable, the Company may terminate this Agreement without further liability to Facility. This Section 13.3, together with the indemnity provided under Section 13.1, states Facility's sole and exclusive remedy, and the Company's sole and exclusive liability, regarding infringement or misappropriation of any intellectual property rights of a third party.

**13.4 Indemnification by Facility.** Facility will defend, indemnify, and hold harmless the Company and its officers, directors, managers, and employees from and against any and all Losses incurred by the Company and its indemnitees in connection with any third-party action,

suit, claim, or proceeding to the extent such Losses arise out of (a) Facility's (or any of its Authorized Users') breach or violation of any representation, warranty, covenant, agreement, obligation, or undertaking made by Facility or its Affiliates in this Agreement (including any schedule or exhibit thereto) or any other agreement, instrument or other document delivered by or on behalf of Facility in connection with this Agreement or any of the transactions contemplated thereby, (b) Facility's (or any of its Authorized Users') violations of HIPAA or other Laws related to the delivery of health care or health care services or the payment for health care or health care services, including any Laws relating to Medicare fraud and abuse, and (c) inaccurate information or documentation entered into the Portal by Practitioners or any of Facility's staff.

## 14. TERMINATION.

14.1 **Termination.** Either Party may terminate this Agreement, including all rights granted hereunder, upon thirty (30) days' notice to the other Party (i) without cause, or (ii) if the other Party breaches a material term of this Agreement, and the breach is either incapable of cure or remains uncured at the expiration of such 30-day period. A Party may terminate this Agreement immediately, upon written notice to the other Party, if such other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, liquidation, or assignment for the benefit of creditors. The Company may also terminate this Agreement, upon ten (10) days' written notice to Facility, if (i) Facility is formally charged with Medicare fraud, (ii) serious moral business issues arise with respect to Facility, or (iii) under the limited circumstances set forth in Section 13.3. Facility may also terminate this Agreement, upon ten (10) days' written notice to the Company, if (i) the Company is formally charged with Medicare fraud, or (iii) serious moral business issues arise with respect to the Company.

14.2 **Effect of Expiration or Termination.** Upon termination or expiration of this Agreement: (a) the Company will stop providing the Services, and Facility will stop all access to and use of the Platform; (b) all rights and obligations described in this Agreement shall terminate and cease to be in effect, except to the extent any provision therein is intended by its terms to survive following termination; and (c) subject to Section 8.3, each Party shall return to the other Party (or, at such other Party's instruction, destroy and provide such other Party with written certification of the destruction of) all documents, computer files, and other materials containing any of such other Party's Confidential Information that are in its possession or control.

14.3 **Survival.** The following provisions will survive expiration or termination of this Agreement: Section 1 ("Definitions"), Section 5.5 ("Feedback"), Section 6 ("Fees and Payment"), Section 8.3 ("Aggregated Data"), Section 8.4 ("Use of Feedback"), Section 9 ("Intellectual Property"), Section 10 ("Confidentiality"), Section 11.3 ("Disclaimer"), Section 12 ("Limitation of Liability"), Section 13 ("Indemnification"), Section 14.3 ("Effect of Expiration or Termination"), this Section 14.4 ("Survival"), and Section 15 ("General Provisions").

## 15. GENERAL PROVISIONS

15.1 **Assignment.** Neither Party may assign or otherwise transfer this Agreement, or any of its rights or obligations hereunder, without the prior written consent of the other Party; provided, however, that the Company may, upon written notice to Facility and without the consent of Facility, assign or otherwise transfer this Agreement (a) to one of its Affiliates, or (b) in connection with a change of control transaction (whether by merger, consolidation, sale or exchange of equity interests, sale of all or substantially all assets, or otherwise); provided that, in the case of clause (b), the assignee shall agree in writing to be bound by the terms and conditions of this Agreement. Any assignment or other transfer in violation of this Section 16.1 will be null and void and a material breach of this Agreement. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties and their permitted successors and assigns.

15.2 **Counterparts.** This Agreement may be executed in counterparts (which may be exchanged by facsimile or PDF or other electronic transmission), each of which will be deemed an original, but all of which together will constitute the same agreement.

15.3 **Entire Agreement.** This Agreement (including the Schedules and Exhibits attached hereto) constitutes the final and complete agreement between the Parties regarding the subject matter hereof, and supersedes any prior or contemporaneous communications, representations, or agreements between the Parties, whether oral or written, including, without limitation, any confidentiality or non-disclosure agreements.

15.4 **Exclusive Forum.** The Parties hereby consent and agree to the exclusive jurisdiction of the state and federal courts located in the State of New York, Borough of Manhattan for all suits, actions, or proceedings directly or indirectly arising out of or relating to this Agreement, and waive any and all objections to such courts, including but not limited to, objections based on improper venue or inconvenient forum, and each Party hereby irrevocably submits to the exclusive jurisdiction of such courts in any suits, actions, or proceedings arising out of or relating to this Agreement.

15.5 **Force Majeure.** Except for Facility's obligations to pay any sums due hereunder, no Party shall be deemed to be in breach of this Agreement for any failure or delay in performance to the extent caused by reasons beyond its reasonable control, including, but not limited to, acts of God, earthquakes, strikes, or shortages of materials or resources.

15.6 **Governing Law.** This Agreement shall be governed by and construed in accordance with the Laws of the State of New York, without regard for choice of law provisions thereof.

15.7 **Independent Contractors.** The Parties are independent contractors. No Party shall be deemed to be an employee, agent, partner, joint venturer, or legal representative of the other for any purpose, and neither shall have any right, power, or authority to create any obligation or responsibility on behalf of the other.

15.8 **Non-Solicitation.** Each Party recognizes that the employees of the other party, and such employees' loyalty and service to that other Party, constitute a valuable asset of that other Party. Accordingly, each Party agrees not to canvass, solicit directly or indirectly, contract,

or hire any employee, candidate for employment, or other personnel of the other Party during the Term and for six (6) months after any termination of this Agreement, or six (6) months following termination of employment of an employee or personnel with the other Party, whichever occurs first. For the avoidance of doubt, nothing herein shall preclude the hiring of any such person in response to general solicitations in newspapers, Internet job boards, and the like.

15.9 **Publicity.** Facility hereby consents and agrees to Company's use of Facility's Customer web site names (including associated trademarks) in Company's press releases, website, and marketing materials.

15.10 **Notices.** All notices required under this Agreement (other than routine operational communications) must be in writing in one of the following forms. Notices shall be effective upon: (a) actual delivery to the other Party, if delivered in person, or by facsimile, or by e-mail (other than notices under Section 14.1, which may not be made via e-mail), or by national overnight courier; or (b) five (5) business days after being mailed via US postal service, postage prepaid.

15.11 **Severability.** If any provision of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, that provision shall be amended to achieve as nearly as possible the same economic effect as the original provision, and the remainder of this Agreement shall remain in full force and effect. Any provision of this Agreement, which is unenforceable in any jurisdiction, shall be ineffective only as to that jurisdiction, and only to the extent of such unenforceability, without invalidating the remaining provisions hereof.

15.12 **Third-Party Beneficiaries.** Except as set forth in Section 13.1 and Section 13.4, nothing in this Agreement is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

15.13 **Waiver.** No failure or delay by any Party in exercising any right or remedy under this Agreement shall operate or be deemed as a waiver of any such right or remedy.

15.14 **Further Assurances.** Each Party agrees to do and perform all such further acts and things and will execute and deliver such other agreements, certificates, instruments and documents necessary or that the other Party may deem advisable in order to carry out the intent and accomplish the purposes of this Agreement and to evidence, perfect or otherwise confirm its rights hereunder.

15.15 **Arbitration.** In the event of any controversy or claim arising out of or relating to this Agreement or the breach thereof, or a dispute as to the meaning of this Agreement or any of its terms ("**Dispute**"), the Parties agree to submit any such Dispute to final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided that such arbitration shall be presided over by a single arbitrator. Judgment upon the arbitration award may be entered in any court having jurisdiction. All mediation or arbitration hearings shall be held in New York, New York, and all aspects of the same shall be treated as confidential. Decisions of the arbitrator shall be in writing.

Notwithstanding the foregoing, any Party may apply to any court of competent jurisdiction for injunctive relief without breach of this arbitration provision.

15.16 **Regulatory Event.** Notwithstanding anything to the contrary herein, if the Company determines in good faith, upon the advice of legal counsel, that a change to the Agreement is required to comply with applicable Law (a “**Regulatory Event**”), then upon request by the Company, Facility and the Company shall cooperate in good faith to restructure the terms of this Agreement (including any exhibits or schedules thereto) in a manner acceptable to the Company so as to remediate the circumstances giving rise to such Regulatory Event.

*[Remainder of Page Intentionally Left Blank]*

**IN WITNESS WHEREOF**, each of the Parties has caused this Agreement to be executed by its duly authorized representative as of the Effective Date.

**PARACHUTE HEALTH, LLC**

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

Name:

Title:

**Facility Name**

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

Name:

Title:

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

**Facility Address**

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

\*Street: \_\_\_\_\_

\*City/State/Zip: \_\_\_\_\_

**Corporate (Notification) Mailing Address (if different than above):**

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

Street: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Attn: \_\_\_\_\_

**EXHIBIT A**

Please provide a list of Facilities in the Network, where relevant.

**EXHIBIT B**  
**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”) is made as of the Effective Date by and between the Facility (“Covered Entity”) and **PARACHUTE HEALTH, LLC** (“Business Associate”).

**BACKGROUND**

Covered Entity and Business Associate wish to enter into this Agreement for purposes of complying with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), and the regulations promulgated thereunder; 45 C.F.R. Parts 160 and Part 164, Subparts A, C, D and E (collectively the “HIPAA Standards”). The provisions of this Agreement apply with respect to all Protected Health Information (“PHI”), as defined in 45 CFR § 160.103, created, received, maintained or transmitted by Business Associate in its representation of Covered Entity.

WHEREAS, Covered Entity is a covered entity as such term is defined under HIPAA and as such is required to comply with the requirements thereof regarding the confidentiality and privacy of PHI; and

WHEREAS, Business Associate has entered or may enter into an agreement or agreements with Covered Entity (“Service Agreement”), pursuant to which Business Associate will render services to, for, or on behalf of Covered Entity; and

WHEREAS, by providing services pursuant to the Service Agreement, Business Associate shall become a business associate of Covered Entity, as such term is defined under HIPAA, and will therefore have obligations regarding the confidentiality and privacy of PHI that Business Associate creates for, or receives from or on behalf of, Covered Entity.

**TERMS**

In consideration of the mutual covenants contained herein, Business Associate and Covered Entity agree as follows:

1. Definitions. For the purposes of this Agreement, capitalized terms shall have the meanings ascribed to them herein. All capitalized terms used but not otherwise defined herein will have the meaning ascribed to them by HIPAA
2. Obligations of Business Associate.
  - (a) Confidentiality.



- i. Business Associate shall: (a) use or disclose PHI only in connection with fulfilling its duties and obligations under this Agreement and the Service Agreement; (b) shall not use or disclose PHI other than as permitted or required by this Agreement or required by law; and (c) shall not use or disclose PHI in any manner that violates applicable federal and state laws or would violate such laws if used or disclosed in such manner by Covered Entity.
- ii. Subject to the restrictions set forth in the previous paragraph and throughout this Agreement, Business Associate may use the information received from Covered Entity if necessary for: (a) the proper management and administration of Business Associate; (b) to carry out the legal responsibilities of Business Associate; (c) to De-Identify PHI as permitted by 45 C.F.R. § 164.502(d); and (d) for the provision of Data Aggregation services to Covered Entity under the terms of the Service Agreement, and as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- iii. Subject to the restrictions set forth in Section 2(a)(i) and throughout this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that:
  1. Disclosures are required by law; or
  2. Business Associate obtains reasonable assurances from the person or entity 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 or entity, and the person or entity notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- iv. To the extent the Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, Business Associate will comply with the requirements of 45 CFR Part 164, Subpart E that apply to Covered Entity in the performance of such obligations.
- v. Business Associate will make a reasonable effort to limit the use or disclosure of PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request, except where the minimum necessary standard, as described in 45 CFR § 164.502(b), does not apply.

- (b) Safeguards. Business Associate will 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 Covered Entity as required by the HIPAA Standards, and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate will comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI.
  
- (c) Availability of Books and Records. Business Associate will make books and records relating to the use and disclosure of PHI available to the Secretary of Health and Human Services (“Secretary”) or the Secretary’s designee, in a reasonable time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity’s compliance with the HIPAA Standards.
  
- (d) Individuals’ Rights to their PHI.
  - i. At Covered Entity’s request, Business Associate will make available PHI in Business Associate’s possession to enable Covered Entity to respond to a request by an individual for access to PHI in accordance with 45 CFR § 164.524.
  - ii. At Covered Entity’s request, Business Associate will make available PHI in Business Associate’s possession for amendment, and will incorporate any amendments to PHI, in accordance with 45 CFR § 164.526.
  - iii. Business Associate will maintain and will provide to Covered Entity on request such documentation of disclosures of PHI as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Upon receipt of a request for an accounting directly from an individual, Business Associate will forward such request to the Covered Entity to allow the Covered Entity to provide the individual an accounting of disclosures containing the information described in 45 CFR § 164.528.
  
- (e) Disclosure to Third Parties. Business Associate will ensure that any agent, including a subcontractor, that receives PHI from Business Associate, or creates, receives, maintains, or transmits PHI on behalf of Business Associate, agrees to substantially the same restrictions, conditions and requirements that apply to Business Associate with respect to such PHI.
  
- (f) Reporting Obligations:

i. Business Associate will notify Covered Entity of any Breach of unsecured PHI, as defined in 45 CFR § 164.402 and required by 45 CFR § 164.410, without unreasonable delay and in no case later than 10 calendar days after Business Associate discovers the Breach. Such report shall include, to the extent known: (a) the identification of each individual whose PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the Breach; (b) the date of the Breach, if known, and the date of discovery of the Breach; (c) the scope of the Breach; and (d) the Business Associate's response to the Breach. In the event of a Breach, the Business Associate shall, in consultation with Covered Entity, mitigate, to the extent reasonably practicable, any harmful effect of such Breach known to Business Associate.

(g) In the event of a use or disclosure of PHI that is improper under this Agreement but does not constitute a Breach, Business Associate promptly shall report such use or disclosure to Covered Entity.

(h) In the event of any Security Incident, Business Associate shall report such Security Incident in writing to Covered Entity within ten (10) business days of the date on which Business Associate becomes aware of such Security Incident; provided, however, the Parties acknowledge and agree that this Section 2(d)(iii) constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below). "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.

3. Obligations of Covered Entity.

(a) Permissible Requests.

i. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would violate applicable federal and state laws if such use or disclosure were made by Covered Entity.

ii. Covered Entity may request Business Associate to disclose PHI directly to another party only for the purposes allowed by HIPAA and the HITECH Act.

(b) Notifications.

- i. Covered Entity will notify Business Associate of limitations to its notice of privacy practices where such limitations affects Business Associate's use or disclosure of PHI.
- ii. Covered Entity will notify Business Associate of changes to the permission by an individual to use or disclose his/her PHI where such change affects Business Associate's use or disclosure of PHI.
- iii. Covered Entity will notify Business Associate of any restrictions to the use or disclosure of PHI to which Covered Entity has agreed to abide in accordance with 45 CFR § 164.522.

4. Term and Termination.

- (a) General Term and Termination. This Agreement will be effective as of the Effective Date, and shall terminate when all PHI is destroyed, or, if it is infeasible to destroy the PHI, protections are extended to such PHI, in accordance with the termination provisions of this Section 4.
- (b) Material Breach.
  - i. If either party has knowledge of a material breach of this Agreement by the other party, the non-breaching party shall provide an opportunity for the breaching party to cure the breach or end the violation. Where said breach is not cured within ten (10) business days of the breaching party's receipt of notice from the non-breaching party of said breach, the non-breaching party shall, if feasible, terminate this Agreement and the portion(s) of the Service Agreement affected by the breach.
  - ii. Where either party has knowledge of a material breach by the other party and cure is not possible, the non-breaching party shall, if feasible, terminate this Agreement and the portion(s) of the Service Agreement affected by the breach.
- (c) Return or Destruction of PHI. Upon termination of this Agreement, for any reason, Business Associate shall:
  - i. If feasible as determined by Business Associate, return or destroy all PHI received from, or created or received by Business Associate for or on behalf of Covered Entity that Business Associate or any of its subcontractors and agents still maintain in any form, and Business Associate shall retain no copies of such information; or

- ii. If Business Associate determines that such return or destruction is not feasible, extend the protections of this Agreement to such information and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible, in which case Business Associate's obligations under this Section shall survive the termination of this Agreement.

5. Miscellaneous.

- (a) Assignment. This Agreement may not be assigned by either party without the prior notice to the other party. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.
- (b) Amendment. If any of the regulations promulgated under HIPAA or the HITECH Act are amended or interpreted in a manner that renders this Agreement inconsistent therewith, the parties shall amend this Agreement to the extent necessary to comply with such amendments or interpretations. This Agreement may be amended only by written consent of the parties.
- (c) Third Parties. Nothing in this Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever. There are no third-party beneficiaries of this Agreement.
- (d) Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning its subject matter, and supersedes all prior and contemporaneous agreements and understandings, express or implied, oral or written.
- (e) Governing Law. This Agreement will be deemed to have been made in New York and will be governed by and construed in accordance with New York law. The section headings in this Agreement are for convenience only and will not affect its interpretation.
- (f) Conflicting Terms. In the event that any terms of this Agreement conflict with any terms of the Service Agreement, the terms of this Agreement shall govern and control.
- (g) Notice. Any notice or other communication by either party to the other will be in writing and will be deemed to have been given when hand delivered, sent by nationally-recognized overnight delivery service, or mailed, postage prepaid, registered or certified mail, addressed as follows:

If to Covered Entity: Address next to the signature line for such Covered Entity

If to Business Associate: Parachute Health, LLC  
15 West 18th Street, 6th Floor  
New York, New York 10011  
Attn: Zachary Fleitman

or to such other address as either party may designate by notice pursuant to this section.